

2010

# The Truth About Haiti

Irwin P. Stotzky

*University of Miami School of Law*, [istotzky@law.miami.edu](mailto:istotzky@law.miami.edu)

Follow this and additional works at: [https://repository.law.miami.edu/fac\\_articles](https://repository.law.miami.edu/fac_articles)



Part of the [Comparative and Foreign Law Commons](#), and the [Law and Society Commons](#)

---

## Recommended Citation

Irwin P. Stotzky, *The Truth About Haiti*, 26 *Conn. J. Int'l L.* 1 (2010).

This Article is brought to you for free and open access by the Faculty and Deans at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# THE TRUTH ABOUT HAITI

*Irwin P. Stotzky*<sup>1</sup>

The transition from dictatorship to democracy is a long and arduous process in the evolution of any society. Indeed, such transitions, although crucially important for the well-being of millions of people, are problematic at best. While the 1980s, 1990s, and the opening decade of the twenty-first century have witnessed the slow movement from authoritarian regimes to fledgling constitutional democracies in many nations, this process is far from complete. It remains much debated in concept and fragile in practice.

The dramatic expansion of interest in the ideas of constitutionalism, the rule of law, democracy, and human rights in diverse parts of the world has given rise to the need to examine, in greater depth, the varied forms which law and institutions designed to promote human rights and government by and for the people can take. Moreover, this wave of democratization has brought a renewed interest in justificatory theories and conceptions of democracy. These theories are crucial for helping change authoritarian regimes into democratic ones. But there is a caveat to offer. Before one can undertake this analysis, one must understand the promise and significance of human rights to a democracy. Indeed, there is an intimate relationship between human rights and the creation of a democracy.

In this essay, I wish to develop this relationship by looking at some of the breathtaking difficulties, and possible solutions to them, in the movement from authoritarianism to democracy. I do this by exploring the theoretical and practical relationships between the economic, social, political, and legal dimensions within the context of justificatory theories of democracy. In general, I use Haiti as the specific example when analyzing these issues. In Part I, I introduce the Haitian dilemma by looking at the recent devastating earthquake that struck Haiti on January 12, 2010. In Part II, I examine the theoretical problems associated with the concept of human rights. In Part III, I explain my conception of democracy. This preliminary conception is developed as a justification for democracy and thus as a basis for examining the transition process. It is also useful for suggesting changes in the structures of these societies which, I believe, will protect human rights and

---

1. Copyright © Irwin P. Stotzky 2010. Professor of Law and Director, Center for the Study of Human Rights, University of Miami School of Law. First, and foremost, I wish to thank Dean Jeremy R. Paul for inviting me to deliver the inaugural Richard D. Tulisano '69 Human Rights Lecture at the twenty-fifth anniversary of the University of Connecticut Journal of International Law. I also wish to thank Professor Mark Weston Janis and Professor Neysun Mahboubi for organizing the conference and for the kindness they showed me during the conference. I wish to thank Katayoun Sadeghi, Editor-in-Chief of the University of Connecticut Journal of International Law, and the symposium Editors – Nicole Paquette, Matthew King, Rubins Dawud, and John Rosato – for the hard work they put in organizing the conference and making sure it ran smoothly. Finally, I wish to thank the staff of the law review, and the administrative staff of the University of Connecticut School of Law for all of their help and hard work.

allow people a serious opportunity to experience democracy. In Part IV, I sketch out the significant problems of consolidating a democracy. Part V examines the macro and micro changes that are needed for creating the conditions that will help produce morally correct results to the seemingly insoluble problems associated with the transition process. Part VI suggests the importance of a constitutional adjudicative tradition to the development of a democracy. In part VII, I suggest specific ways to encourage the Haitian people and the international community to help Haiti recover from the devastation of the earthquake and to move towards democracy. Finally, in Part VIII, I discuss the international and Haitian government response to the earthquake. If properly approached, the resolution of these issues should strengthen the chance for the blooming of democratic regimes in Haiti and even worldwide.

### I. THE EARTHQUAKE

The earthquake that hit Haiti on January 12, 2010, a little more than nine months ago, left at least 230,000 dead<sup>2</sup> and perhaps more than 300,000 dead.<sup>3</sup> An estimated two million people were left homeless in Port-au-Prince alone, and it is likely that anywhere from 300,000<sup>4</sup> to 600,000<sup>5</sup> have already left the city seeking shelter with family in the countryside. Roughly 250,000 to 500,000 were injured, almost half of which are likely to be children, according to a pediatric emergency study.<sup>6</sup> Hospitals in Miami-Dade, Broward and Palm Beach counties in Florida have provided for hundreds, perhaps thousands, of earthquake victims and the federal government has activated the National Disaster Medical system to cover some of the victims' medical costs.<sup>7</sup> The United States has led the world in its response to the Haitian tragedy, but not necessarily in as humane a manner as suggested by the national and local media.

The earthquake was a catastrophic magnitude 7.3 earthquake.<sup>8</sup> Its epicenter was near the town of Léogâne, approximately 17 kilometers (10.56 miles) southwest of Port-au-Prince.<sup>9</sup> An estimated three million people were affected by

---

2. STAFF OF S. COMM. ON FOREIGN RELATIONS., 111TH CONG., HAITI AT A CROSSROADS, S. Rep. No. 111-51, at 1 (2010); U.S. Agency for Int'l Dev., *Haiti – Earthquake*, USAID.GOV, [http://www.usaid.gov/our\\_work/humanitarian\\_assistance/disaster\\_assistance/countries/haiti/template/fs\\_sr/fy2010/haiti\\_eq\\_fs58\\_06-11-2010.pdf](http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/countries/haiti/template/fs_sr/fy2010/haiti_eq_fs58_06-11-2010.pdf) (last visited July 18, 2010).

3. Estimates vary, compare STAFF OF S. COMM. ON FOREIGN RELATIONS., *supra* note 2, at 1; U.S. Agency for Int'l Dev., *supra* note 2, with GOV'T OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATIONAL RECOVERY AND DEVELOPMENT OF HAITI 7 (2010).

4. U.S. Agency for Int'l Dev., *supra* note 2.

5. GOV'T OF THE REPUBLIC OF HAITI, *supra* note 3, at 7.

6. Science Daily, *Almost Half of Injured Haitians Are Likely to Be Children, Pediatric Emergency Study Indicates*, sciencedaily.com, Jan. 28, 2010, <http://www.sciencedaily.com/releases/2010/01/100127085542.htm> (last visited July 18, 2010).

7. U.S. Dep't of Health and Human Services, *National Disaster Medical System Helping U.S. Hospitals Treat Survivors of Earthquake in Haiti*, HHS.GOV, [http://www.hhs.gov/haiti/ndms\\_ushospital.html](http://www.hhs.gov/haiti/ndms_ushospital.html) (last visited July 18, 2010).

8. GOV'T OF THE REPUBLIC OF HAITI, *supra* note 3, at 6.

9. *Id.*

the quake.<sup>10</sup> Approximately 30,000 commercial buildings, 208,000 residences, 1,300 educational institutions, and more than 50 hospitals and health centers have collapsed or were seriously damaged.<sup>11</sup> The earthquake damaged or destroyed many notable landmark buildings, including the Presidential Palace, the National Assembly building, the Port-au-Prince Cathedral, and the National Penitentiary.<sup>12</sup> Among those killed were Archbishop of Port-au-Prince, Joseph Serge Miot,<sup>13</sup> and opposition leader Micha Gaillard.<sup>14</sup> The headquarters of the United Nations Stabilization Mission in Haiti (MINUSTAH), located in Port-au-Prince, collapsed, killing many people including the mission chief, Hédi Annabi.<sup>15</sup>

Many countries responded to appeals for humanitarian aid, pledging funds and dispatching rescue and medical teams, engineers, and support personnel. For example, even the small nation of Israel sent a medical team which arrived almost immediately after the earthquake struck and set up a field hospital.<sup>16</sup> Communication systems, air, land, and sea transport facilities, hospital and electrical networks, minimal at best before the earthquake, have been severely damaged or completely destroyed by the earthquake. These problems, of course, hampered rescue and aid efforts. The United States military took charge of the airport, treating the operation as a military mission. This both helped and hampered rescue efforts.<sup>17</sup> For example, confusion over who was in charge, air traffic congestion, and problems with prioritization of flights further complicated early relief work. Port-au-Prince morgues were overwhelmed. Tens of thousands were buried in mass graves. As rescues diminished, supplies, medical care, and sanitation became priorities. Delays in aid distribution led to angry appeals from aid workers and survivors.

International aid is essential to any kind of positive recovery, but reliance on the Haitian people is even more essential. But the Haitian government appears not to be up to the task. For example, that government called off search efforts very

---

10. U.S. Agency for Int'l Dev., *supra* note 2.

11. GOV'T OF THE REPUBLIC OF HAITI, *supra* note 3, at 7.

12. U.N. News Centre, *Haiti Earthquake Situation: Situation Updates*, [http://www.un.org/News/dh/infocus/haiti/haiti\\_earthquake\\_update.shtml](http://www.un.org/News/dh/infocus/haiti/haiti_earthquake_update.shtml) (last visited July 18, 2010); GOV'T OF THE REPUBLIC OF HAITI, *supra* note 3, at 7; Deborah Sontag, *Amid the Rubble, Seeking a Refuge in Faith*, N.Y. TIMES, Jan. 18, 2010, at 1-2, available at <http://www.nytimes.com/2010/01/18/world/americas/18church.html>.

13. Charles Forelle, *Archbishop Joseph Serge Miot*, WALL ST. J., Jan. 23, 2010, available at <http://online.wsj.com/article/SB10001424052748704423204575018131856209128.html>.

14. José de Córdoba, *Micha Gaillard, Fought For Democracy*, WALL ST. J., Jan. 22, 2010, available at <http://online.wsj.com/article/SB10001424052748703822404575019190559786092.html>.

15. Joe Lauria, *Hédi Annabi, U.N. Diplomat*, WALL ST. J., Jan. 22, 2010, available at <http://online.wsj.com/article/SB10001424052748704423204575018140345867322.html>.

16. Israel Ministry of Foreign Affairs, *Israeli Aid to Haiti, Field Hospital Set Up*, Jan. 28, 2010, [http://www.mfa.gov.il/MFA/Israel+beyond+politics/Israeli\\_aid\\_arrives\\_Haiti\\_17-Jan-2010.htm](http://www.mfa.gov.il/MFA/Israel+beyond+politics/Israeli_aid_arrives_Haiti_17-Jan-2010.htm).

17. See Charles Bremner, *Frances Bridles at US Haiti Take-Over*, THE TIMES, Jan. 18, 2010, available at [http://timescorrespondents.typepad.com/charles\\_bremner/2010/01/it-did-not-take-long-for-france-to-start-bickering-with-the-united-states-over-haiti-the-american-take-over-of-the-relief.html](http://timescorrespondents.typepad.com/charles_bremner/2010/01/it-did-not-take-long-for-france-to-start-bickering-with-the-united-states-over-haiti-the-american-take-over-of-the-relief.html); Philippe Naughton, *US Troops Take Over Palace as Haiti Aid Effort Steps up a Gear*, THE TIMES, Jan. 19, 2010, available at [http://www.timesonline.co.uk/tol/news/world/us\\_and\\_americas/article6994013.ece](http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6994013.ece).

early—on Friday, January 22, 2010.<sup>18</sup> On January 29, 2010, the United Nations noted that the emergency phase of the relief operation was drawing to a close.<sup>19</sup>

President Obama announced that former Presidents Bill Clinton, who also acts as the United Nations special envoy to Haiti, and George W. Bush would coordinate efforts to raise funds for Haiti's recovery.<sup>20</sup> On June 22, 2010, the U.S. Senate passed the Kerry-Corker Haiti Empowerment, Assistance, and Relief Act of 2010 which authorizes the distribution of two billion dollars to Haiti in the next two years.<sup>21</sup> President Obama pledged that the people of Haiti "will not be forgotten."<sup>22</sup>

Josseline Colimon Fetherie, the Haitian Trade and Industry Minister, estimated that the earthquake's toll on the Haitian economy would be massive, with one in five jobs lost.<sup>23</sup> In response to the earthquake, foreign governments offered badly needed financial aid. The European Union promised €420 million Euros (U.S. \$593 million) for emergency and long-term aid.<sup>24</sup> Brazil announced \$172 million for long-term recovery aid.<sup>25</sup> The United Kingdom Secretary of State for International Development, Douglas Alexander, called the result of the earthquake an "almost unprecedented level of devastation," and committed the United Kingdom to 20 million pounds (U.S. \$32.7 million) in aid,<sup>26</sup> while France promised €10 million Euros (U.S. \$14.4 million).<sup>27</sup> Italy announced it would waive prepayment of the €40 million Euros (U.S. \$55.7 million) it had loaned to Haiti,<sup>28</sup> and the World Bank waved the country's debt repayments for five years.<sup>29</sup> In a startling announcement, Venezuela promised \$1.32 billion.<sup>30</sup>

18. Robin Henry, *Haiti Calls Off Search for Survivors As Effort Turns to Aid*, THE TIMES, Jan. 23, 2010, available at [http://www.timesonline.co.uk/tol/news/world/us\\_and\\_americas/article6999640.ece](http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6999640.ece). Moreover, more than nine months after the earthquake struck the situation remains dire. Indeed, the cleanup of the rubble has hardly started.

19. United Nations, *Press Conference on Haiti by United Nations Emergency Relief Coordinator*, Jan. 29, 2010, [http://www.un.org/News/briefings/docs//2010/100129\\_Holmes.doc.htm](http://www.un.org/News/briefings/docs//2010/100129_Holmes.doc.htm).

20. See Steve Holland, *Obama Enlists Bush, Clinton to Help Haiti*, REUTERS, Jan. 14, 2010, <http://www.reuters.com/article/idUSTRE60D5JO20100115>.

21. STAFF OF S. COMM. ON FOREIGN RELATIONS, *supra* note 2, at v.

22. Helene Cooper, *Obama Pledges Aid to Haiti*, N.Y. TIMES, Jan. 15, 2010, at A13, available at [http://www.nytimes.com/2010/01/15/us/15prexy.html?\\_r=1](http://www.nytimes.com/2010/01/15/us/15prexy.html?_r=1).

23. U.S. General Services Administration, *MARKETIPS*, 23 U.S. GEN. SERVICES ADMIN. 16 (May/June 2010), available at <https://apps.fas.gsa.gov/> (search "marketips") (last visited July 18, 2010).

24. *Haiti Quake Response Exposes EU Frailties*, EU BUSINESS (Jan. 20, 2010, 2:47 PM), <http://www.eubusiness.com/news-eu/haiti-quake.2cw> (last visited July 18, 2010).

25. *Countries Pledge Billions Towards Haiti's Recovery* NPR (Apr. 1, 2010) transcript available at <http://www.npr.org/templates/story/story.php?storyId=125441585&sc=ema>.

26. Trenton Daniel et al., *More Troops, Humanitarian Aid Coming to Haiti; Mass Migration to U.S. Not Materializing*, MIAMI HERALD, Jan. 18, 2010, available at [http://www.miamiherald.com/2010/01/18/1431558\\_p3/window-closing-for-survivors-relief.html](http://www.miamiherald.com/2010/01/18/1431558_p3/window-closing-for-survivors-relief.html).

27. *Id.*

28. *Id.*

29. PNoWB Int'l Secretariat, *International Financial Institutions Increase Support to Haiti in Aftermath of Earthquake* (Feb. 3, 2010) available at <http://www.pnowb.org/admindb/docs/Haiti%20update%2003FEB10.pdf>.

30. Joe Johns & MaryAnne Fox, *Most Countries Fail to Deliver on Haiti Aid Pledges*, CNN (July 15, 2010, 2:29 PM), <http://www.cnn.com/2010/WORLD/americas/07/15/haiti.donations/index.html?iref=allsearch>.

But the aid has been slow in coming. Indeed, as this article goes to press, nine months after the earthquake struck, most of the promised aid has not been received.<sup>31</sup> Refugee International, a refugee-advocacy group, released a report stating that “the people of Haiti are still living in a state of emergency, with a humanitarian response that appears paralyzed.”<sup>32</sup> The United States has been among the donor nations that have been sharply criticized for its slow response in providing promised aid.<sup>33</sup> Former President Bill Clinton, who serves as co-chair of the Interim Haiti Recovery Commission, stated that eighteen recovery projects, which would aid more than a million Haitians, have been approved but are underfunded.<sup>34</sup> The ‘funding gaps’, as the former president calls them, demonstrate the “ongoing problem of trying to get donor nations to fulfill their pledges.”<sup>35</sup>

Canada has been especially diligent and generous in its promise to aid Haiti. The Government of Canada announced it would match the donations of Canadians up to a total of CAD\$50 million.<sup>36</sup> After a United Nations call for help for the people affected by the earthquake, Canada pledged an additional CAD\$60 million (U.S. \$58 million) in aid, bringing Canada's total contribution to CA D\$135 million (U.S. \$131.5 million).<sup>37</sup> However, Canada's efforts are not without its criticisms. As of August 2010, Canada has provided only a small fraction of the pledged aid.<sup>38</sup> Additionally, some of the promised aid has been spent on Canada's military operation.<sup>39</sup> Critics of Canada report that the military did not provide security and stability or medical aid to the civilian population, as was the goal of the mission.<sup>40</sup> Instead, the warships were “loaded mainly with soldiers and guns”.<sup>41</sup> The naval mission reportedly stayed for only five weeks and departed in a “disruptive and

---

31. Jonathan M. Katz & Martha Mendoza, *Haiti Still Waiting for Pledged US Aid*, CBS NEWS (Sept. 28, 2010), <http://www.cbsnews.com/stories/2010/09/29/world/main6909940.shtml> (the money is said to be tied up due to bureaucracy, disorganization, and a lack of urgency. “One Senator has held up a key authorization bill because of a five million dollar provision he says will be wasteful.”).

32. Larry Freund, *UN Urges Increased Protection for Haitian Refugees*, VOANEWS.COM (Oct. 7, 2010), <http://www.voanews.com/english/news/americas/UN-Urges-Increased-Protection-for-Haitian-Refugees-104521294.html>.

33. Jacqueline Charles, *U.S. to provide \$120M to Haiti*, MIAMI HERALD (Oct. 7, 2010), <http://www.miamiherald.com/2010/10/07/1861168/us-to-provide-120m-to-haiti.html>. However, in response to criticism, the United States has approved \$120 million in aid that will be allocated for “education, rubble removal, and housing in earthquake shattered Haiti.” *Id.*

34. *Id.*

35. *Id.*

36. *Ottawa Matching Canadians' Haiti Donations*, CBC NEWS (Jan. 14, 2010), <http://www.cbc.ca/canada/story/2010/01/14/haiti-canada-aid.html>.

37. Agence France-Presse, *Canada Pledges 60 Million Canadian Dollars for Haiti Aid*, GOOGLE NEWS (Jan. 19, 2010), <http://www.google.com/hostednews/afp/article/ALeqM5h2IptHeJr8BF8LMxPPiqrMla3Qg>.

38. Roger Annis, *Canada's Failed Aid to Haiti*, CAN. HAITI ACTION NETWORK (Aug. 4, 2010), <http://www.canadahaitiainction.ca/content/canadas-failed-aid-haiti>.

39. *Id.*

40. Roger Annis, *Exaggerated Claims: Assessing the Canadian Military's Earthquake Response*, HAITIANALYSIS.COM (Oct. 7, 2010), <http://www.haitianalysis.com/2010/10/7/exaggerated-claims-assessing-the-canadian-military-s-earthquake-response>.

41. *Id.*

destructive fashion” taking much of the equipment that was needed to remove rubble.<sup>42</sup>

Unfortunately, the destruction caused by the earthquake is only one of the problems confronting Haiti’s attempt to make the transition from authoritarianism to democracy—from “misery to poverty with dignity.” Indeed, many of the problems facing Haiti, while highlighted and exacerbated by the destruction caused by the earthquake, however, are not caused by natural disasters. They are man-made ones. In addition, and unfortunately, it is now clear that the United States-led relief effort has conformed to the three fundamental tendencies that have shaped Haiti’s history and crippled its development as a democracy. It has adopted military priorities and strategies. It has sidelined—indeed severely minimized—Haiti’s own leaders and government, and even ignored the needs of a majority of its people. And it has proceeded in ways that reinforce the already harrowing gap between the rich and poor by ignoring the role the Haitian people can play in their own development. All three tendencies are not simply connected, they are mutually reinforcing. These same tendencies will continue to govern the imminent reconstruction effort as well, unless determined political and social action is taken to counteract them.

Thus it is clear that Haiti is more than a natural tragedy. The Haiti case is suggestive for other significant reasons. It teaches important lessons about the difficulties of the transition process and the creation and stabilization of a democratic nation. It teaches lessons about the importance of law to the creation and sustainability of a democracy. It demonstrates that if the relevant political actors, both domestic and international, are to be successful in helping to create the conditions for democracy to bloom, they must be highly educated and thoughtful on a number of significant issues. They must be intimately familiar with, and understand the history and culture of a nation. They must understand the major problems and complexities inherent in the transition from dictatorship to democracy. And they must have a clear vision of the justificatory theories for democracy. To put it another way, the creative experiments necessary to transform a society will not take place without such knowledge, and the international community’s effort to help nations overcome their authoritarian legacies will simply fail. Unfortunately, the international community’s recent efforts in Haiti since 1994 illustrate this failure.

The original intervention by the international community in 1994 to return Aristide and its approach to Haiti have been successful in a very limited way, but the long term prognosis for creating the conditions for democracy to flower has been shattered by events since that intervention. The international community was successful in restoring the Aristide government to power, and political power was transferred from one duly elected government to another—from Aristide to Préval, from Préval back to Aristide, and from Aristide back to Préval.<sup>43</sup> This adds up to a

---

42. *Id.*

43. Between 2004 and 2006 a puppet government put in by the United States, with support from France and Canada, governed Haiti. This led, once again, to the deaths of several thousand Haitians.

total of four democratically elected governments since 1990. The Haitian Army was abolished and a new and at first relatively well-trained police force was created which, for all its limitations, functioned reasonably well for a short period under extremely difficult conditions.<sup>44</sup> Today the nation is in disorder. Political violence, criminal violence, and human rights violations are once again a serious problem. Abject poverty, disease, and unemployment, among other serious problems, persist. Life for the vast majority of Haitians remains frightening.

In spite of their problems, Haitians do not expect or want a return to dictatorship, however benign. When one looks to the future, it is clear that democratization remains at an embryonic stage. The democratization process has been reversed. In point of fact, since 2004, Haiti has clearly been sliding in the wrong direction.

It is relatively clear that the international community, particularly the United States, dramatically underestimated the Haitian challenge. After the success of the 1994 military intervention, the international community did not have a well thought-out plan linked to the publicly stated reasons for the intervention—to restore democracy<sup>45</sup>—that would have given the Haitian people a fighting chance to challenge successfully some of those almost unresolvable problems.<sup>46</sup> The international community simply assumed that economic and political development, and social harmony, would be relatively easy to achieve. This was a dangerous illusion. In fact, there appears to be an inverse relationship between these factors. The very weaknesses of Haitian institutions and modes of operation, which made the military engagement so easy and successful, make the economic, political, and social challenges so difficult. The debility of Haitian institutions and their operations provided no strong basis for resisting a military invasion; neither did they, or the culture that had emaciated them, provide a foundation for democratic, political, or economic development. The society lacks a cohesive national identity and any sense of collective purpose.

Therefore, before political actors can judge whether humanitarian intervention in the guise of military force and the occupation of a country is justified, they need to have a clear understanding of the goals of intervention and whether they are justifiable. Simply because the action may be “legal” does not, of course, necessarily make it morally justifiable. These political actors also need to understand the problems associated with any transition to democracy and to be imaginative in trying to resolve those problems, working within the history and culture of that particular nation. Transformation requires knowledge, theory, and the courage to take steps necessary for positive reform.

---

44. See Carol J. Williams, *Haiti Debates Having a Homegrown Army*, L.A. TIMES, July 30, 2007, at A8. The United Nations trained the police force, and appointed at that time former, and today current, New York City Police Commissioner Raymond Kelly to head the training group. See Ron Howell, *Offer To Train Rookies in Native Land*, NEWSDAY (N.Y.), Mar. 8, 2004, at A23. Mr. Kelly is the first person to hold the post for two non-consecutive tenures.

45. The publicly stated reasons should have been not to restore, but to create a democracy!

46. This is the point at which theory becomes important. Contrary to most people who favor democracy, I believe that justificatory theories of democracy are essential for creating solutions to the problems confronting a nation which is attempting to move from dictatorship to democracy.



## II. HUMAN RIGHTS

Before addressing some of these other issues, one must understand the importance of human rights to the creation of a democracy. The recognition and protection of human rights is perhaps the most significant aspect of social life in a democratic society. Indeed, human rights constitute an indispensable instrument that governments employ to avoid social catastrophes that often threaten the lives of large numbers of people. This is, of course, especially important in the transition from authoritarianism to democracy, precisely because the transition is such a long and arduous journey.

Yet several prominent problems in any such transition must be successfully resolved if the transition is to succeed without great harm to masses of people. Institutional structures must be developed and secured. Economic and political stability must be assured. Corporatist social and political structures must be transformed so that the powerless get their fair shares of the necessities of life. The rule of law<sup>47</sup> must become paramount in the formal institutions and practices of government, and in the affairs of daily life. The transition process is, however, quite fragile, and the wrong choices by public officials on the many complicated issues that confront them can prove fatal to a democracy and thus lead to serious deprivations of human rights.

The problem is even more complicated than it first appears. One of the major factors that weaken the quest to promote human rights is the perception that once legally recognized, they are forever secured. Although such recognition is important because it makes it possible to block certain kinds of human rights violations carried out by the state, it is not enough. It is insufficient because those who have a monopoly on coercion may employ the state machinery to carry out the most brutal and devastating violations of rights. Legal recognition of rights simply does not ensure their practical enforcement when the state engages in these acts. International covenants, while helpful, also have their limits. The ideological divergence among governing powers in different nations leads to recognition of only a limited set of undisputed rights. In addition, notions of sovereignty restrict acceptance of international obligations, including outside intervention in aid of the investigation and punishment of human rights violations. The failure of legal recognition to protect fully human rights is connected to another barrier to their continued viability—naked interests. These naked interests, however, are often

---

47. The rule of law is a call to political justice and has remained, over the centuries, a vibrant ideal of democratic society. The central core of the principle embodies the enduring values of regularity and restraint – of treating like cases alike and inhibiting the arbitrary actions of government officials. These thoughts are traditionally captured in the slogan of “a government of laws, not men.” When I refer to the rule of law, I also mean to refer to the Constitution of a nation, the document which creates and embodies the public morality of that particular nation. The rule of law includes both the words of the Constitution and its animating principles – those that are necessarily “inferred from the overall structure of the Constitution.” Owen Fiss, *The Fragility of Law*, 54 YALE L. REP. 40 (2007). In addition, it includes specific congressional or parliamentary enactments that articulate the governing principles of any particular society. “These principles are laden with a special normative value that derives from the role they play in defining [the] national identity” of a country – what it means to be a member of a specific nation-state. *Id.*

concealed behind a mask of ideology. Moreover, attacks on human rights often come from true believers of ideologies contemptuous of these rights.

If legal recognition does not ensure promotion or protection of rights, what additional approaches exist? I believe that one must look beyond the legal recognition of human rights to the creation of a moral consciousness of humanity which recognizes the value of those rights and abhors any action that disregards them. Moreover, such a consciousness, if fully rooted, constitutes the most permanent and efficacious barrier against the enemies of human dignity. But how can a moral consciousness of humanity be achieved? The possible answers: through rational discussion or propaganda. However, the latter is insufficient because it conditions the mind to a kind of answer which may well adapt itself to the opposite stimulus and because it implies an elitist attitude which is pragmatically inconsistent with the defense of the rights promoted by the propaganda.

Rational discourse, on the other hand, encompasses a broader range of interests than that of human rights. Almost every human being, even a tyrant, feels obligated to justify his acts. That attempt at justification, even if extremely hypocritical and unsophisticated, may lead to illuminating analysis. The issue runs even deeper. The very proponents of human rights often attempt to avoid the moral discussion necessary to justify these rights. However, it is clear that the commitment is a moral one and, if it is not justified on the basis of reasons, one remains defenseless before those who reject it. Finally, it is also necessary to determine both what rights must be recognized and their scope. It, therefore, seems obvious that the best political system for creating a moral consciousness in people is a democratic one. But what kind of a democracy?

### III. DELIBERATIVE DEMOCRACY

Before recognizing the relationship of human rights to democratic development, one needs to examine the moral justifications for democracy.<sup>48</sup> Most political actors involved in the process of consolidating democratic regimes find conceptions of democracy and all they entail only relevant from the perspective of subjective legitimacy. (from the perspective of the functionality of the political system.) Subjective legitimacy is the generalized belief of the population in the moral justifiability of the government and its directives. Democracy is therefore seen as an instrument to the end goal of stability. In effect, those engaged in democratic transition and propose institutional reforms are attempting to create, consolidate, and stabilize democratic structures while averting threats of reversal to authoritarian alternatives. These political actors and scholars are clearly firm partisans of democracy and take it for granted that it is the best political system. They do not, however, consider that what makes democracy the best political

---

48. For a thorough discussion and analysis of theories of democracy and suggested policies derived from some of these theories, *see generally* IRWIN P. STOTZKY, *SILENCING THE GUNS IN HAITI: THE PROMISE OF DELIBERATIVE DEMOCRACY* 62-75 (1997).

system is relevant to ascertaining the means for its creation and preservation. Instead, they typically adopt a perspective characterized by a results-oriented process, concluding that whatever is responsible for making democracy the morally best system of government can be identified by certain factual features—regular ways in which citizens may affect a change of government, the division of power, or respect for basic rights. Simply by identifying and replicating the phenomenon or desired results, using a system in force in some paradigmatic country, such as the United States, Britain or France, these actors seek, in a value-neutral way, the proper means for achieving or preserving that system.

This method is mistaken; indeed, it is deeply flawed. Democracy is a normative concept and cannot be identified in depth without articulating fully the evaluative conception that justifies its distinctive institutions. The inevitability of this normative inquiry is demonstrated by the inherent conflicts and tensions within the distinctive institution of democracy, making it impossible simply to identify and adopt appropriate democratic institutions. Any number of questions can be raised to prove this point. Is democracy the phenomenon of representation (the weakest form of democracy), or is a system of representation merely an auxiliary institution imposed by the difficulties of direct democracy in an open society? Is it the separation of the executive and the legislative powers, or is it instead an optimal arrangement that is not adopted in parliamentary democracies without the loss of value? Is it the recognition of a bill of rights as limits to majoritarian decisions imposed by independent judicial institutions? Are political parties distinctive democratic institutions, or are they unnecessary in a better working, well functioning democracy? Is the proportional representative system the best method of democratic representation, or is it only one of many diverse alternatives that must be chosen for technical reasons?

When we come to realize the full range of these issues, it is clear that there are no distinctive institutions of democracy outside of a value-laden theory that simply justifies a set of options. We cannot identify institutions commonly understood as democratic and work out a method for stabilizing them without systematically analyzing the moral theory that justifies them. Reality does not tell us which institutions are essential and which are contingent in relation to a normative concept like that of democracy. We are unable to determine what contingencies we can manipulate to preserve the essentials of the concept. The “realist” who thinks otherwise is mistaken, even substantially confused.

While this is not the place to discuss fully theories of democracy and their justifications, it is clear that the best means for countering some of the difficulties of moving from dictatorship to democracy is to create a polity governed by universal and impersonal principles where individual citizens, who are not identified with any particular interests but preserve the capacity of adopting different ones, make choices in a process of public justification and dialogue. This requires broad popular participation in governmental decision making and its consequent actions, led by strong participative and ideologically committed

political parties and parliamentary bodies. These parties and parliaments must themselves, of course, be internally democratic, open, and disciplined.

These conclusions are based on an epistemic view of democracy and upon the utmost respect for the autonomy of each individual. In this view, autonomy consists of the exercise of self-governing capacities, such as the capacities of understanding, imagining, reasoning, valuing, and desiring. Free persons have, and are recognized as having, such capacities. In a political order dedicated to serving the conditions of free deliberation for its members, those members can legitimately expect of that order that it not only permit, but also encourage the exercise of such capacities—that it permit and encourage autonomy. Indeed, one of the hallmarks of liberal democracy is the notion of the citizen who is not identified with any interest, but is free to choose and has an equal voice in expressing his choice.

This ideal of the autonomous individual as a paradigm for democracy rejects the view that democracy is simply a conglomeration of interested individuals and groups working in conjunction with the economy or merely a mechanism for replacing elites. I<sup>49</sup> and many others, most prominently Carlos S. Nino,<sup>50</sup> have elsewhere attempted to explain democracy as a regimented mode of the practice of moral discourse by which we try to solve conflicts in the light of universal, general and public principles that would be accepted in ideal conditions of impartiality, rationality and knowledge. This, the argument goes, makes democracy morally superior to other systems of government. Democracy substitutes simple majoritarian decision for the requirement of a unanimous consensus in the common and non-regimented practice of moral discourse. But this is not completely sufficient. This substitution weakens the force of the prescription that the result of the procedure is morally valid because it would be accepted under ideal conditions (given the functional equivalence between unanimity and impartiality). Nevertheless, democracy preserves some epistemological value because the need to justify one's decision to others in order to gain their support generates a tendency toward impartiality. This impartiality, in turn, makes it more reliable than other decision processes, such as individual reflection.

This epistemic view of democracy presupposes that individuals, who are basically moral persons, are its natural agents and that the freedom and equality of their intervention in the democratic process should be preserved and expanded. This is not the case when corporations control the polity and assume the role of intermediaries.<sup>51</sup> Moreover, this conception of democracy as a substitute for moral discourse presupposes that the primary objects of decision in the democratic process are not crude interests but principles that legitimize a certain balance of interests from an impartial point of view. While it is possible that discourse may have its genesis in crude interests, for those interests to garner majority agreement,

---

49. See generally STOTZKY, *supra* note 48; Irwin P. Stotzky, *Creating the Conditions for Democracy*, in DELIBERATIVE DEMOCRACY AND HUMAN RIGHTS 157 (Harold Hongju Koh & Ronald C. Slye eds., 1999).

50. See, e.g., CARLOS SANTIAGO NINO, *ETICA Y DERECHOS HUMANOS: UN ENSAYO DE FUNDAMENTACION* (1984). Nino was the main proponent of this epistemic view of democracy.

51. Unfortunately, this is often the case in authoritarian regimes.

advocates must win support and justify their positions. Thus, the dialogue requires participants to reach for principles beyond their crude interests. They must reach for principles from an impartial point of view. In addition, dialogue respects and fosters autonomy. Again, this is not the case when corporations control the polity and assume the role of intermediaries. It follows, therefore, that corporations, which agglutinate people around common interests and not around moral views about how to deal with common interests, cannot be the protagonists of the democratic process.

Corporative entities in transitional societies maintain and even increase their power whenever democracy departs substantially from the strictures of the original practice of moral discourse. When this occurs, public debate becomes restricted and debased, the power of participants actually to influence people becomes grossly unequal, and the participation of interested people becomes narrower and weaker. Thus, in order to strengthen the democratic power of common citizens against that of corporations, it is crucial to broaden and deepen popular participation in political discussion and decision-making.

Furthermore, the mechanisms of representation, necessary in large and complex societies, are prone to be subverted by corporative power. This subversion can be caused by several factors. There is the possibility of corruption of the individual representatives, their indifference or even antipathy toward the people they represent when corporations oppose the people's positions, and the apathy of the people represented. For these reasons, it is essential to widen the ways of direct participation by the people whose interests are at issue. This is, of course, a difficult task. Nevertheless, it is possible to do this through general procedures like referenda, popular consultation or through decentralized decisions that allow the concerned people to participate directly.<sup>52</sup>

Moreover, the vision of democracy as a regimented modality of discussion of moral principles to regulate conflicts allows us to qualify the liberal rejection of any intermediary between the individual and the state. Indeed, in a large, complex society, some institutions must protect the individual against the awesome power of corporatism. The most likely candidates are political parties, but only when those parties are the standard for or represent the basis of fundamental principles of political morality. They are indispensable in a modern and large society, not only because they nurture those principles in professional politicians who purport to put them into practice if duly elected, but also because they exempt individuals from justifying their votes before each other on the basis of principles. In this view, it is sufficient to vote for a party that organizes its programs on the basis of public, general and impartial principles.

The deterioration of the role of political parties in favor of corporations occurs when the importance of parliament, the national arena for these parties, is severely eroded. Unfortunately, the integrity of parliament is often diminished by corporative forces in the transition and consolidation processes. Corporations prefer

---

52. Courts, of course, may play a central role here.

to exert pressures and achieve agreements in the private offices of the administration rather than in the noisy, pluralistic, and more public parliamentary corridors. In addition, administrations tend to preserve some of the practices inherited from previous authoritarian governments. Strengthening political parties and the parliamentary institutions in order to protect the democratic system against corporative power, however, will work only to the extent that these institutions do not become transformed into corporations themselves. Unfortunately, this corporative transformation occurs often, particularly when parties weaken their ideological commitment, fail to promote debates on essential questions of public morality, block channels of participation, operate through methods of patronage and clientelism, or resort to personalism and caudillism. If this happens, these parties and parliaments tend to develop elites with distinctive interests who are likely to become aligned with members of traditional corporative groups in a manner inimical to democratic principles. This also causes other dangerous distortions. When parties become corporations, parliament becomes weakened by the lack of diverse views held by different representatives, by a discourse that is both ideologically vacuous and detached from the experiences and interests of the people represented, and by a general appearance of opacity and self-service.

To alleviate or even avoid this danger, political parties and parliament must be fortified. This can be achieved by opening the parties to broad popular participation, promoting permanent political debates within them, perfecting internal democratic mechanisms for selecting party leaders and candidates, and giving a public accounting of the reasons for significant actions, such as how funds are to be managed. It is also important that the electoral system combine the need for promoting party cohesion and ideological identity with the need for the voter to identify with individual representatives, rather than simply voting for the party slate. A mixed electoral system incorporating proportional representation with individual candidate selection may satisfy both needs. This concept can be extended to parliamentary procedures, which should combine party discipline with a degree of autonomy for individual representatives.<sup>53</sup>

From this limited discussion of democracy, it is apparent that the international community lacked a valid normative conception of democracy when it intervened in Haiti and failed to create the proper incentives in Haiti to help democracy grow. Moreover, if the international community, lead by the United States, did have a coherent normative conception of democracy, it seems to have misunderstood how to apply it—to create the conditions for a constitutional democracy to grow—to its actions in Haiti.

An additional serious problem afflicts the international effort in Haiti and exacerbates the failure to understand the significance of normative justifications for democracy. There seems to be a misunderstanding, even an ignorance, of the

---

53. From this discussion, it is clear that courts have an important, if somewhat limited role to play in checking the executive and helping to stabilize and consolidate institutional structures that champion individual participation and democracy. Again, however, that role depends on particular visions and versions of democracy and on the particular historical and cultural aspects of any particular nation.

problems associated with the transition and consolidation process.<sup>54</sup> But before one can judge the potential for a successful transition from dictatorship to democracy in any nation undergoing this difficult process, one must understand the problems associated with it. To put it another way, this process presents difficult problems of its own that must be understood before one can create policies favorable to the creation of a democracy.

But there is a further complication. The problems of the transition process and possible solutions to them, in turn, cannot be successfully addressed without a valid justificatory theory of democracy. Theory and practice go hand in hand. As a base line, such a democratic vision requires a continuous order of mutually assured and encouraged autonomy in which political decisions are manifestly based on the judgments of members of that society who are perceived and treated as free and equal persons. The expression of self-governing capacities must operate both within the formal institutions of politics and in the affairs of daily life. The democratic order must satisfy the conditions of equal freedom and autonomy that give it definition.

#### IV. MAJOR TRANSITIONAL PROBLEMS

What are some of the issues associated with the creation and consolidation of a democracy? There are several significant features of the consolidation of democracies that have taken place in Latin America and Haiti. The first significant feature of the consolidation is the fact that the process of democratization has taken place in many of these nations during some of the worst economic, social, and political crises in the history of these nations. In general, these crises include the commission of massive human rights violations (murder, rape, and torture), enormous debts, hyperinflation, epidemics, natural disasters, dramatic and surprising increases in already high rates of infant mortality, extremely high rates of unemployment, and the collapse of entire systems of social welfare.<sup>55</sup>

Haiti presents an uncomfortably extreme example of many of these problems. There, the human and material resources are in such short supply, or have been degraded by such severe poverty (even destitution), illiteracy, malnutrition, disease, violence, corruption, overpopulation, rapid urbanization, deforestation, and soil erosion, as to raise serious questions about Haiti's continued survival as a society and as an independent nation-state.

Even before the crisis erupted, between 1991 and 1994, over the military's refusal to restore President Aristide to power, Haiti was the poorest country in the

---

54. For an analysis of different characterizations of the process of transition, see generally *THE BREAKDOWN OF DEMOCRATIC REGIMES* (Juan J. Linz & Alfred Stepan eds., 1978); *TRANSITIONS FROM AUTHORITARIAN RULE: LATIN AMERICA* (Guillermo O'Donnell et al. eds., 4th prtg. 1993).

55. Argentina during the reign of terror, between 1976 and 1983, is the prime example of some of these problems. See Jefferson Morley, *Argentina's Trial, Latin Tribulations*, N.Y. TIMES, Dec. 17, 1985, at A27. See generally NAT'L COMM'N ON THE DISAPPEARANCE OF PERSONS, NEVER AGAIN (Writers and Scholars Int'l trans., 1986), available at [http://web.archive.org/web/20031004074316/nuncamas.org/english/library/nevagain/nevagain\\_001.htm](http://web.archive.org/web/20031004074316/nuncamas.org/english/library/nevagain/nevagain_001.htm).

Western Hemisphere.<sup>56</sup> Its per-capita income was \$370 a year.<sup>57</sup> At that time, in a country of approximately seven million people, there were fewer than a thousand doctors.<sup>58</sup> The life expectancy was a mere fifty-six years, one in every eight babies died before reaching the age of one, and seventy percent of all children were estimated to suffer from some form of malnutrition.<sup>59</sup> At least two-thirds of the population was illiterate, and the state school system was so inefficient and small that fewer than five percent of eligible students were enrolled in government high schools.<sup>60</sup> As if these problems are not bad enough in themselves, many of the doctors, engineers, administrators, and others with the necessary skills to change Haiti have been killed or driven into exile.<sup>61</sup> Most of those who are in exile do not wish to risk their lives and fortunes by returning to Haiti until positive changes occur.<sup>62</sup> The irony is that Haiti needs these very same people to make the changes that would attract them to return. Unfortunately, these conditions have not improved since the "restoration of democracy." It is clear that many of these conditions have become even more serious since the international military interventions of 1994 and 2004.<sup>63</sup>

---

56. *Haitians Resigned to Sanctions*, ST. PETERSBURG TIMES (Fla.), June 24, 1993, at 10A.

57. John Kifner, *Mission to Haiti: The Overview; Haitians Rejoice as American M.P.'s Visit Police Posts*, N.Y. TIMES, Sept. 27, 1994, at A1.

58. Larry Rohter, *Haiti Is a Land Without a Country*, N.Y. TIMES, Aug. 14, 1994, at E3.

59. *Id.*

60. *Id.* The state of education, a major key to development, is one of the main reasons that Haiti remains one of the poorest countries in the world. The teachers remain wholly inadequate to the task of educating the millions of those desiring to improve their lives. For example, in December 1996 and January 1997, Haiti's approximately twelve hundred grade school teachers took a simple test, and almost all of them failed it. Only four hundred could alphabetize a list of words; only forty-one could arrange fractions by size. This ignorance is reflected in the students. More than half of the children between six and twelve cannot read. In addition, classrooms are extremely overcrowded - some have more than two hundred students - and most classrooms do not have benches, chalkboards, or even doors. See Michael Norton, *Teacher Strike Highlights Education Crisis in Haiti; They Want Better Training - and Their Pay*, MIAMI HERALD, Jan. 13, 1997, at 8A.

61. Indeed, there are sizable populations of exiled Haitians in New York, Montreal, Paris, and Miami.

62. See Interview with Cathy Maternowska, Anthropologist (Nov. 8, 1993 - Aug. 1, 1995); Interview with Jean-Jean Pierre, Journalist (1994-1995); Interview with Leon-Francois Hoffman, Professor and expert on Haitian culture, Princeton Univ., Dept. of Romance Languages and Literatures, (Jan. 1993 - Aug. 2010). Most of the information about these issues and the state of civil society has been gleaned from extensive continuing interviews, from 1987 to 2010, with Cathy Maternowska, President Jean-Bertrand Aristide, and Jean-Jean Pierre, from extensive discussions with Leon-Francois Hoffman, and through the writings of all of these people and others, particularly Michel-Rolph Trouillot, too numerous to list.

63. For example, in 2004, according to estimates by the World Bank, Haiti's gross national income (GNI) measured at 2002-2004 prices was equivalent to \$390 per head or \$1,680 per head on an international purchasing-power parity basis. 1 THE EUROPA WORLD YEAR BOOK 2058 (47th ed. 2006). "In 1995-2004 the population increased at an average annual rate of 2.0%, while gross domestic product (GDP) per head decreased, in real terms, by an average of 1.2% per year." *Id.* During this time period (1995-2004), "Haiti's overall GDP decreased, in real terms, at an average annual rate of 0.8%." *Id.* In 2003-2004, real GDP decreased by 3.8%. *Id.* In 1997, primary school enrollment "included only 19.4% of children in the relevant age-group (18.9% of boys; 19.9% of girls)." *Id.* at 2059. In 1997, secondary school enrollment included only 34.2% of children in the relevant age-group (35.2% of boys; 33.2% of girls). *Id.* "In 1999 combined enrollment in primary, secondary and tertiary education was 52%." *Id.* In addition, children in Haiti are more likely to die during early childhood than in any other country in the



The most difficult obstacles to democracy in many countries, particularly in Haiti, however, may be psychological and cultural. For example, the tradition of a predatory, oppressive state has left Haitians deeply distrustful of government and of foreigners. Haiti's political culture has long been characterized as an admiration of force. Political disputes are often settled not by negotiation, but through the exercise of force, and respect for democratic procedures and obligations, including reasoned justifications for actions, are minimal.

Furthermore, there is great controversy in the international community about whether the problems associated with these transitions and the attempts to address them are leading to a change in the economic and social structures of these countries necessary to allow for a new oligopolization of the economy.<sup>64</sup> To put it another way, it remains unclear whether a new oligopolization will develop which will greatly restrict the avenues of access for the powerless sectors of society to the basic goods necessary for leading a life of dignity, or whether, on the contrary, the crisis is leading to more efficient schemes of production, thereby benefiting all sectors of society. In Haiti, the unequal distribution of resources, and thus the general living conditions, has become even more disparate since the international military intervention. The elites have obtained an even larger share of the wealth than they possessed before the intervention, and everyone else (more than ninety percent of the population) has been made worse off.<sup>65</sup> This has led to a loss of hope, indeed, even to a sense of desperation on the part of the vast majority of Haitians. Moreover, this sad story is a reflection of Haiti's history.

Indeed, the history of Haiti is a troubled tale of military violence and political corruption. With the singular exception of one regime that governed between 1818 and 1843, Haiti has been plagued by ceaseless coups, assassinations, and massive violations of human rights.<sup>66</sup> The only period of relative stability was between 1915 and 1934 when the United States Marines occupied the country in order to

---

Western Hemisphere. The under-five mortality rate in 2004 was 117 per 1,000 live births. *Id.* at 2060. In fact, one of every fourteen babies in Haiti dies before reaching his or her first birthday. U.N. CHILDREN'S FUND [UNICEF], CHILD ALERT: HAITI 1 (2006), available at [http://www.unicef.org/child\\_alert/haiti/](http://www.unicef.org/child_alert/haiti/). Moreover, in 2007, the life expectancy at birth was 57.03 years. CENT. INTELLIGENCE AGENCY, THE WORLD FACT BOOK 2007, at 250 (2007). Malnutrition is, of course, another serious problem. Indeed, one of every three children in Haiti is chronically malnourished. *Specialist Tries To Reverse Malnutrition in Haiti*, BIOTECH L. WKLY., Sept. 1, 2006, at 457.

64. Indeed, before the restoration of the Aristide government, the military leaders appeared to be taking over the economic monopolies of the nation, which were traditionally controlled by the economic elites. See, e.g., Howard W. French, *Haiti's Curse; Power Means Brutality; Practice Makes Perfect*, N.Y. TIMES, Oct. 17, 1993, § 4, at 1.

65. See, e.g., BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2003 (2004), available at <http://www.stat.e.gov/g/drl/rls/hrprt/2003/27902.htm>.

66. Although Haiti enjoyed relative political stability under Jean-Pierre Boyer (1818-43), his methods were certainly not always just. See DAVID NICHOLLS, FROM DESSALINES TO DUVALIER: RACE, COLOUR AND NATIONAL INDEPENDENCE IN HAITI 67-82 (1979). See also MICHEL-ROLPH TROUILLOT, HAITI, STATE AGAINST NATION: THE ORIGINS AND LEGACY OF DUVALIERISM 47-50 (1990).

insure United States commercial privileges.<sup>67</sup> When the troops were finally removed, conventional hostilities with the Dominican Republic resumed.<sup>68</sup>

The history of Haiti is also one of sharply opposed interests, starkly competing visions of state and nation, and a rigid class structure. If "the Haitian mind" or attitude is meant to signify the political, economic, and social positions of the majority, Haitians have been of one attitude only twice in their history. Their first coming together as a people was in 1791-1804, when they bravely stood together against slavery and French colonialism. Their second coming together as a people was in 1990, when at least a sixty-seven percent majority elected Jean-Bertrand Aristide to the presidency in the country's first democratic and free elections. The events that have occurred since that election, however, reflect the incredibly deep divisions that have developed in this society between these two defining moments in the life of the Haitian nation. Class structure, not merely income, and historical tides, not simply the immediate past, are at the roots of Haiti's modern crisis. Indeed, a positive resolution of this crisis is impossible unless these cultural and historical issues are understood and confronted.

Haiti is the product of a revolution against slavery and colonialism. It emerged as a nation in 1804, from the destruction of the French colony of Saint-Domingue.<sup>69</sup> By the late eighteenth century, approximately 1790, Saint-Domingue was reputed to be the most profitable colony of the Western World. Indeed, it

67. The occupation of Haiti by the United States may have stabilized the currency and briefly reduced administrative corruption, but the overall effect of the occupation severely damaged Haiti in a variety of ways. TROUILLOT, *supra* note 66, at 100-08. See e.g., HAITI - TODAY AND TOMORROW: AN INTERDISCIPLINARY STUDY 255-56 (1984); AMY WILENTZ, *THE RAINY SEASON: HAITI SINCE DUVALIER* 77 (1989); Johnathan Power, *Haiti Still Has a Chance to Survive*, CALGARY HERALD, Nov. 1, 1993, at A4. For a more detailed account of the American occupation of Haiti, see HANS SCHMIDT, *THE UNITED STATES OCCUPATION OF HAITI 1915-1934* (1971).

68. Indeed Haiti and the Dominican Republic have been at odds since the beginning of the nineteenth century, when France acquired Santa Domingo from Spain in 1793 by the Treaty of Basel. French control over the island had already been disrupted by the slave revolt in 1791. In 1801, Troussaint Louverture, after establishing his authority in Saint-Domingue, occupied Santo Domingo. He promulgated a constitution, which proclaimed him (as governor-general) sovereign over the whole island of Hispaniola, where Haiti and the Dominican Republic are situated. This constitution gave subsequent Haitian rulers the so-called legal basis for their attempts to regain possession over the eastern part of the island. After the French withdrawal from Saint-Domingue in November 1803, Touissant's successors, Generals Jean-Jacques Dessalines and Henri Christophe, attempted to expel the French who still remained in Santa Domingo. But the French brought in reinforcements and forced the Haitians to retreat. While retreating, the Haitians looted and slaughtered Dominicans, which became the bases for indictments by Dominican historians of Haitian "barbarism."

In 1821, President Jean-Pierre Boyer of Haiti, responding to overtures from some Dominicans, invaded the Dominican Republic, and by February of 1822 had conquered the entire island. He reasserted the principle of the indivisibility over the island. This invasion began a twenty-one year period in which Haitians took over most of the administrative posts in Santa Domingo and ruled with an authoritarian hand. Boyer abolished slavery, but revived forced labor. He closed the university and left many churches without priests. In February 1844, the Dominicans revolted and won their independence from Haiti. Hostilities between Haiti and Dominican Republic continue through today. See HOWARD J. WIARDA & MICHAEL J. KRYZANCK, *THE DOMINICAN REPUBLIC, A CARIBBEAN CRUCIBLE*, 25-28 (1992); JAMES KNIPPERS BLACK, *THE DOMINICAN REPUBLIC, POLITICS AND DEVELOPMENT IN AN UNSOVEREIGN STATE* 17-19 (1986).

69. This included all of Haiti and Santo Domingo.

established world production records for coffee and sugar.<sup>70</sup> It was, however, also the worst place in the world to be a black African slave. The French colonialists imported many more enslaved Africans than almost any plantation society in the Americas, including the United States. Unfortunately, it also killed these slaves at a much more rapid rate through general mistreatment and harsh labor conditions. Finally, in August 1791, the slaves of Saint Domingue revolted. Under the successive leadership of two figures who later became Haiti's national heroes—Toussaint Louverture and Jean-Jacques Dessalines—they defeated Napoleon's army, allegedly the strongest army in the world, after twelve years of a brutal, protracted struggle. This was an incredible victory at this time for the Haitian people. Indeed, during this period it was almost impossible to believe that such a guerilla force could defeat the most powerful army in the world. Thus, the first major large-scale successful slave revolt in the Americas helped create one of the first independent states of the Americas and, not incidentally, the first black state of the Americas.

The revolution was, on one level, both a revolution for social justice in Haiti and a victory against French colonialism. It was also significant for broader reasons. It foreshadowed the independence of Latin America in general, and the destruction of African-American slavery. Nevertheless, the European powers and the United States did not easily accept the revolution. They ostracized Haiti diplomatically. Even though they traded with Haiti, they did so only on the harsh terms they imposed. The reasons were clear. In 1791, European powers controlled Caribbean colonies and freely and happily accepted African slavery. Representatives of Southern States in the United States Congress, of course, argued vehemently against the recognition of Haitian independence, fearing that such recognition would encourage black slaves in the United States to revolt. Thus, the United States did not recognize Haitian independence until 1862, when the Civil War brought an unexpected need for cotton and destroyed Southern power and influence in Washington.<sup>71</sup>

The French did try to take back Haiti in 1825. France did not reclaim the former colony, but did force Haiti to pay reparations for land which French citizens had forfeited during the rebellion. The former French plantation owners originally encouraged the French government to invade Haiti and to re-enslave the black Haitians. But the French had no taste for another war. Instead, France issued the Royal Ordinance of 1825, which called for huge indemnity payments. In addition to a 150 million gold Franc payment, France decreed that French ships and commercial goods entering and leaving Haiti must be discounted fifty percent.<sup>72</sup>

---

70. See SCHMIDT, *supra* note 67, at 19-41.

71. See Charles H. Wesley, *The Struggle for the Recognition of Haiti and Liberia as Independent Republics*, 2 J. NEGRO HIST. 369, (1917); Noe Dorestant, *A Look at Haitian History 1803-2008, 205 Years of Independence*, HERITAGEKONPA.COM, <http://www.heritagekonpa.com/archives/Haitian%20History.htm> (last visited Oct. 14, 2010).

72. J. Damu, *Haiti Makes the Case for Reparations: The Meter is Running at \$34 Per Second*, FINALCALL.COM NEWS, [http://www.finalcall.com/artman/publish/article\\_1290.shtml](http://www.finalcall.com/artman/publish/article_1290.shtml) (last updated Feb. 10, 2004).

This further weakened—indeed almost totally frustrated—Haiti’s ability to pay the ransom for recognition.

According to the French, the terms of the edict were non-negotiable. Indeed, the French sent twelve warships armed with 500 cannons to impress upon the Haitian people the seriousness of the situation. According to a memorandum drafted by the colonists’ lawyers, France based its 150 million gold Franc indemnity requirement on profits earned by the colonists.<sup>73</sup>

In 1789, Saint Domingue exported 150 million Francs worth of products to France. In 1823, Haitian exports to France, England, and the United States totaled thirty million Francs. The lawyers argued that one-half of the thirty million Francs went toward the cost of production, leaving fifteen million francs of profit.<sup>74</sup> The lawyers took the fifteen million Francs balance and multiplied it by ten – ten years worth of lost profits for the French colonists because of the war for independence. In addition, and what made matters worse, the French required Haiti to secure a loan to pay the first installment on the indemnity. France forced Haiti to borrow the thirty million Francs from a French bank that then deducted the management fees from the face value of the loan and charged interest rates so exorbitant that after Haiti completed repayment, it still owed six million Francs. The 150 million gold Franc indemnity represented France’s annual budget and ten years of revenue for Haiti.<sup>75</sup> It cost Haiti 150 million gold Francs in return for national recognition and the United States and Britain sided with France. The French government bled the nation and rendered it a failed state. It was a merciless exploitation that was designed and guaranteed to collapse the Haitian economy and society.<sup>76</sup>

Haiti was forced to pay the sum until 1947,<sup>77</sup> when the last installment was made. During the nineteenth century, the payment to France amounted to up to seventy percent (70%) of Haiti’s foreign exchange earnings.<sup>78</sup> The money was in exchange for recognizing the country as a sovereign nation. Haiti was isolated at birth—ostracized and denied access to world trade, finance, and international development. It is one of the most vicious examples of national strangulation recorded in modern history. Indeed the value of the amount has been estimated in 2001 at twenty-one billion dollars!<sup>79</sup>

---

73. *Id.*

74. *Id.*

75. *Id.*

76. Hilary Beckles, *The Hate and the Quake*, THEBAHAMASWEEKLY.COM, (Jan. 17, 2010, 10:23:25 AM), [http://www.thebahamasweekly.com/publish/international/The\\_Hate\\_and\\_the\\_Quake\\_by\\_Sir\\_Hilary\\_Beckles9850.shtml](http://www.thebahamasweekly.com/publish/international/The_Hate_and_the_Quake_by_Sir_Hilary_Beckles9850.shtml).

77. Damu, *supra* note 72.

78. Beckles, *supra* note 76.

79. Carol J. Williams, *Haitians Demand France Pay Twenty-One Billion Dollar Restitution*, MIAMI HERALD, June 15, 2003, at 6A. (In August 2010, political activists, artists, and scholars sent a petition to France demanding that France give Haiti seventeen billion dollars as reparations for this injustice to be used for earthquake reconstruction projects. France, of course, rejected the petition.) See Robert Marquand, *France Dismisses Petition for it to Pay Seventeen Billion Dollars in Haiti Reparations*, THE CHRISTIAN SCIENCE MONITOR, (Aug. 17, 2010), <http://www.csmonitor.com/World/Europe/2010/0817/France-dismisses-petition-for-it-to-pay-17-billion-in-Haiti-reparations>; Kim Willsher, *France Urged to Repay Haiti Billions Paid for its Independence*, GUARDIAN.CO.UK, (Aug. 15, 2010, 7:07PM), <http://www.guardian.co.uk/world/2010/aug/15/france-haiti-independence-debt>.

The revolution failed for perhaps an even more significant and insidious reason. The Haitian elites attempted to treat the rural masses in much the same way as the Western nations—particularly France—had treated them. Almost immediately after independence, the elites attempted to recreate the plantation economy. The former slaves, however, despised plantation labor; they simply refused to return to a state of slavery. Instead, they settled as small peasants on land bought or reconquered from the State or abandoned by large landowners.

The urban elites devised a complicated but effective strategy to counter this problem.<sup>80</sup> The first part of the strategy was economic. The elites used the fiscal and marketing systems of the country to create wealth producing mechanisms for themselves. These mechanisms, in turn, allowed the elites to steal the productive labor capacities of the rural peasants. The elites became traders, politicians, and State employees. They prospered by living off the peasants' labor. Taxes collected by the import-export bourgeoisie at the urban markets and custom houses—and paid by the peasants—provided almost the entire source of government revenues. In 1842, for example, perhaps as much as ninety percent (90%) of government revenues were collected at the customhouses. In 1891, more than ninety percent (90%) of State income came from the heavy hand of import and export taxes.

Coffee, Haiti's main agricultural export, became the central focus of the elites' fiscal policy. They taxed this product almost beyond its limits. As the favorite peasant crop to exploit, the coffee crop accounted for approximately sixty (60%) to ninety percent (90%) of government revenues from the late 1800's to the first half of the twentieth century. Moreover, until recently, charges on coffee amounted to a forty percent (40%) tax on personal income. But, after more than two hundred years of independence, the government has yet to collect income taxes from most merchants, civil servants, or middle class employees.

In addition to coffee, successive Haitian governments heavily taxed food and other necessities, such as flour, oil, candles, kerosene, and matches. Indeed, when coffee exports fell, taxes on the necessities rose to offset this shortage. Luxury items for the elites, however, entered the country free of any tariffs.<sup>81</sup>

The economic response of the elites posed serious obstacles to the creation of any form of democratic government. The elites made sure that they received their wealth, even if it meant killing the nation. The State reproduced itself by living off the peasants and abusing them; the urban classes reproduced themselves by taking over the State and the wealth of the peasantry.

These choices by the elites inevitably led to the needless death of innumerable people, destruction of any progressive social and political movements, and, of course, political instability. To limit the problems of political and social instability, the second part of the elites' strategy took effect. This strategy was to isolate the

---

80. This dual strategy was set up during the presidencies of Alexandre Petion (1807-18) and Jean-Pierre Boyer (1818-43). For analysis of these points, see TROUILLOT, *supra* note 66. For some of the points expressed in this section of the book, see Michel-Rolph Trouillot, *Haiti's Nightmare and the Lessons of History*, NACLA REP. ON AMS., January/February 1994, at 46, 47-48.

81. Even today, these luxury items, intended for the economic elite, often enter Haiti without any tariffs.

peasantry on its small mountain plots and therefore keep them away from politics. It was a brilliant, but corrupt, strategy. The very peasants who unknowingly subsidized the elites and the State had no input whatsoever in how it was to be run. They were kept away from the political process “legally” and illegally through manipulation of election laws and harsh repression. For example, before the twentieth-century, it is highly unlikely that any elected politician ever received as many as one thousand legitimate votes.<sup>82</sup> Before the Duvaliér dictatorship, many peasants could not even name the President. The peasants encountered the State mainly through the *presepté*, who collected their market taxes, and through the *chéf seksyon* (section chief), a member of the Army, who acted as the sole representative of all three branches of government in the rural parts of the country. It is clearly not an exaggeration to claim that the rural areas of Haiti were a colony of the urban elites. Even today many of these rural areas and the urban ghettos remain colonies.

The Haitian Creole language, as well as the Haitian culture, emphasizes the overwhelming rift between the elites and the peasants. The great divide is registered in several complex and subtle ways. The languages of Haiti and their uses suggest a variety of barriers. For example, the word *letah* in Creole means both “the state” and “a bully.” The urban people, in turn, refer to the rural peasants as *moun andewò*, which means “outsiders.”

There are other, more subtle language barriers. All Haitians speak Haitian Creole. Less than eight to ten percent of the population, however, speaks French reasonably well enough to claim some form of fluency in that language. But this is not all. Only a tiny minority within the elites are truly bilingual in both French and Creole.

Religious convictions and their representations also work to divide Haitians culturally. Practices and beliefs associated with the major Haitian folk religion, Vodoun, are ubiquitous among the elites, despite their publicly proclaimed adherence to Christianity. In addition, a large percentage of the peasantry claims to be Roman Catholic Christians. Indeed, they practice it and follow the annual cycle of Roman Catholic events. But they also refer to themselves as “servants of the gods,” members of the major folk religion—Vodoun. Publicly, however, the elites associate Vodoun with evil while consistently practicing aspects of it. But they do not stop at strong public criticism of Vodoun. Perhaps even more significant is the fact that successive Haitian authoritarian governments, before the Aristide and Préval administrations, have persecuted many of the people who publicly practice Vodoun. Unfortunately, the persecution had been encouraged and even generated by the hierarchy of the Catholic Church.<sup>83</sup>

---

82. Historians regard the legislative elections of 1870 in Port-au-Prince as one of the few legitimate electoral victories of nineteenth century Haiti. Yet, in 1870, fewer than a thousand Port-au-Prince residents had the right to vote. Interview with Leon-Francois Hoffman, *supra* note 62. Also see JEAN-BERTRAND ARISTIDE & CHRISTOPHE WARGNY ARISTIDE: AN AUTOBIOGRAPHY (Linda M. Maloney trans., 1993).

83. Interview with Leon-Francois Hoffman, *supra* note 62.

Thus, the fundamental cultural division is not necessarily based on a difference in cultural repertoire. Rather, this division is based on the uses of these sometimes quite subtle differences to create a formidable social barrier. For example, more important than the fact of bilingualism are the number of times an elite child is told that it is unacceptable for a member of his class to speak Creole. Moreover, until Aristide's reinstatement to office, the French language had traditionally been used in schools and in the court systems. While Aristide attempted to change this, it remains the language of choice, in both the schools and the courts. The language barrier, therefore, obviously denies majority participation in those institutions. Ninety percent of Haitians are excluded from power.

There is another significant problem that exacerbates all of these issues. There also exists in Haiti historical tension between the older "mulatto" elite and the "black" middle class. This is, however, a very complicated issue. No aspect of Haitian history is more confusing than the physical appearance of its people. Haiti is said to be divided by color, but that is certainly inexact. It is closer to the truth to say that there is a wide situational variability in consciousness of color, and that, for many people, light skin is symbolically important. But this statement merely skims the surface of the issue.<sup>84</sup> The skin color of people must be seen as part of a perceptual whole that is much larger than color. It includes hair type, nose type, lip type, eye color, ear size, and other features, such as amount of body and face hair, and body type. The issue of color is even more complicated. It also includes such factors as the appearance of one's siblings and their in-laws. For men in particular, the color and appearance of one's wife and her family is extremely relevant. Even more important, it is not clear that color determined the emergence of a ruling class so much as did education, military record, and personal connections. Thus, while color is a significant cultural question, it was not at the birth of the nation, nor is it today, so neatly defining a term that social groups can safely be described in those terms.

There is a further complication. All Haitians sincerely consider themselves members of the African race, and claim their bonds of brotherhood with all their race brothers. Nevertheless, educated Haitians have always shared the European's paternalistic disparagement of things African. Indeed, not only did Haitians consider themselves intellectually superior to their African cousins, they considered themselves more aesthetically pleasing. The Haitian mulatto elite and the black middle class were also satisfied to adopt Western intellectual and aesthetic norms and to distance themselves from their African origins. But this does not bode well for the black middle class. While internalizing these mulatto attitudes, the black middle class did not have any biological ties to Europeans. The problem runs deeper. The majority of important positions in government, public administration, and diplomacy were long monopolized by light-skinned Haitians whose social clubs refused admission to those with undesirable skin color.

This color discrimination pervades all aspects of social life, including the selection of partners. As Leon-Francois Hoffmann tells us:

---

84. *Id.*

Marriage partners were valued in exact relation to their phenotype, the ideal being to “marry lighter” than oneself and thereby “improve the race” (*améliorer la raz*). Mulatto girls were thus encouraged to marry foreign whites, and only if they belonged to rich or powerful families could young black women aspire to a mulatto husband. While this internalization of anti-black racialism is far from unknown in the rest of the Caribbean, it is especially shocking and paradoxical in the country which has always defined itself as the Black Republic.<sup>85</sup>

Thus, Haitians are acutely aware that, while they risk discrimination by Western nations based on their color, they exercise, or are the victims of the same discrimination in their own country.

Two major aspects of Haitian life emerge from this sketch. First, the same elite groups that have traditionally exercised political and economic control of Haiti, have totally rejected and ostracized the present majority. Second, the elites have co-opted the State and used it as the key mechanism of both rejection and control. Stated otherwise, the elites believed and continue to believe their lifestyle to be more important than the survival of the majority. That choice meant using the State to expropriate the economic output of the majority and simultaneously to repress them. As many Haitians, and others, have so eloquently argued, the Haitian State is predatory; it has always operated against the nation it claims to represent.

The 1915-1934 United States occupation of Haiti did not alleviate, but instead exacerbated this situation. The occupation left the country with a weaker civil society and a solidified state apparatus. First, the United States Marines reinforced the fiscal and economic power of Port-au-Prince. They did this most obviously by centralizing the customhouses. Second, and more significantly, the occupying forces consciously contributed to the centralization of political power in Port-au-Prince by “pacifying” the countryside. This took the form of “modernizing” the so-called rural police (*chefs de sections*), and by creating a new Haitian army, the very army that the Aristide and Préval governments have attempted to dismantle and contain. The first Haitian army, borne of the war against France, could legitimately claim a patriotic mission. The Haitian *Garde*, however, was created specifically to keep the Haitians in line. Indeed, this force has never fought anyone but Haitians. In contrast to the first Haitian army, whose allegiances were primarily regional, the army created by the marines was heavily centralized.

Centralization meant that power could be more efficiently organized. Thus, it became easier for would-be dictators to control the State.<sup>86</sup> For example, the cadets of the Military School set up by the United States Marines took part in the overthrow of President Elie Lescot (1941-1946), and in the nomination and overthrow of his successor, Dumarsais Estimé (1946-1950). They then placed one of their own, Paul Magloire (1950-1956), in the presidency. By the time Magloire

---

85. See Leon-Francois Hoffman, *Haitian Sensibility*, in *A HISTORY OF LITERATURE IN THE CARIBBEAN: HISPANIC AND FRANCOPHONE REGIONS* 372 (1994).

86. SCHMIDT, *supra* note 67.



left office, the army had become the power behind the throne, the determining factor of Haitian politics.

Any notion of stability from that point meant dictatorship. First, it was the regime of François ("Papa Doc") Duvalier, who ruled with an iron fist between 1957 and his death in 1971 with the aid of a maniacal private security force known as the *Tonton Macoutes*.<sup>87</sup> Papa Doc consolidated his power quickly and ruthlessly, eviscerating individual liberties and political opposition with equal dispatch. Indeed, over forty thousand Haitians reportedly lost their lives as the victims of official brutality.<sup>88</sup> Duvalier stole over five hundred million dollars in foreign aid and taxes and deposited the money into personal accounts in Haiti and abroad.<sup>89</sup> Officials at all levels of government, taking their cue from Duvalier, took part in similar acts of corruption.<sup>90</sup>

Papa Doc Duvalier certainly learned the lessons of Haiti's military well. He gradually discharged most senior officers in the army and then relied heavily on their successors to build the most centralized power in the history of the nation. Then, he closed the Military School. By employing the full powers of the centralized State, Duvalier formalized a system of absolute individual power. He created an all-powerful and intensely personalized executive branch that created and controlled all State activities, from family life to military training. The State even controlled the writing of National School exams. Its apparatus also attacked all the groupings and institutions of civil society—from athletic teams to trade unions. Haiti thus became an authoritarian State.

Papa Doc remained in power for over fourteen years, and, in order to insure a legacy of Duvalier control over the country, organized a fraudulent referendum on January 31, 1971, in which voters "approved" his nineteen-year-old son, Jean-Claude ("Baby Doc"), as his successor.<sup>91</sup> When his father died, Jean-Claude became "President for Life." His rule was almost as repressive as his father's. In 1986, however, when the levels of economic disparities and political corruption reached ungovernable proportions, Baby Doc fled Haiti for exile in France.<sup>92</sup>

---

87. See George DeWan, *Reigns of Terror*, N. Y. TIMES, July 31, 1991, at A3. Also see BERNARD DIEDERICH & AL BURT, PAPA DOC: HAITI AND ITS DICTATOR 1 *passim* (1986); JAMES FERGUSON, PAPA DOC, BABY DOC: HAITI AND THE DUVALIERS 30-59 (1987).

88. FERGUSON, *supra* note 87, at 57 (estimating the number as up to 60,000, with millions more exiled).

89. TROUILLOT, *supra* note 66, at 213-14, 226.

90. *Id.* at 175-77.

91. On January 22, 1971, the official gazette, *Le Moniteur*, carried the amendments that were to be voted on in the national referendum. One of the amendments included lowering the minimum age for the presidency from forty to eighteen. The ballot stated that Jean-Claude had been chosen to succeed his father and listed two questions plus the answer: "Does this choice answer your aspirations? Do you ratify it? Answer: yes." François Duvalier, *Proclamation*, LE MONITEUR, Jan. 22, 1971, at B1-2. The official count was 2,391,916 in favor and, of course, not a single vote was opposed. See e.g., DIEDERICH & BURT, *supra* note 87, at 397.

92. Fearing for his life, and after a series of riots broke out across Haiti in February 1986, Duvalier fled Haiti in a United States cargo plane with his family and seventeen "associates." See *Biography: Jean-Claude Duvalier*, ANSWERS.COM, <http://www.answers.com/topic/jean-claude-duvalier> (last visited Oct. 14, 2010).

The senior Duvaliér achieved his aim only because of the role played by the State in Haitian history since independence. Duvaliér was a very clever dictator, but he did not succeed simply because of his cleverness. Duvaliérism invented few formulas of power. Instead, it systematically codified historical practices of the Haitian State. For example, the methods of the *Tonton Macoutes* are almost identical to the practices developed and refined by the death squads in earlier Haitian history. Similarly, the Duvaliér State systematized and multiplied the practice and power of the State to extract money from the average rural peasant and urban citizen. For example, the Duvaliér government centralized the management of coffee exports and, simultaneously, dramatically increased taxes. The Executive and its favored elites took complete control of the basic commodities, such as oil, flour, and tobacco. They even determined the import and distribution policies of these commodities. These forces simply raided the treasury. Indeed, they made their personal fortunes the very *raison d'être* of State revenue.

The systematizing of the extractive and repressive power of the State significantly worsened the plight of the Haitian nation. Decisions that made almost everyone worse off, such as predatory price policies, geometrically increased the speed of environmental degradation. Impoverished peasants rushed to urban centers. Bypassing the peasants, Baby Doc Duvaliér tried to take advantage of this increased urban labor force to create an economic reversal. But the rapid spread of what are often termed light assembly industries, had the opposite effect. These assembly industries, subcontracted to United States firms, only reinforced polarization. This contributed to an increase in the already huge gap between the economic and social elites and the poverty stricken peasants, and to the urban civil uprisings in the mid-1980s. This forced Jean-Claude Duvaliér into exile in February 1986. He left behind a much poorer country, an almost depleted economy, and even more desperate peasants.

Today, Haiti remains one of the poorest countries in the world. But to make matters worse, it is also one of the most polarized and unequal in wealth and access to education, healthcare, and of course, to political power. The power elite—the same groups of families that have controlled the nation since its independence from France—continues to dominate the country and its economy while more than half of the population, according to the International Monetary Fund (IMF)<sup>93</sup>, survive on a household income of around forty-four cents per day.

Mass destitution has grown far more common and severe in recent decades. Starting in the 1970s, internationally imposed neo-liberal “adjustments” and austerity measures finally succeeded in doing what no Haitian government had managed to do since winning independence in 1804: in order to set the country on the road towards “economic development”, they have driven large numbers of small farmers off their land and into densely crowded urban slums. Only a small minority of these internal refugees have been lucky enough to find sweatshop jobs

---

93. Int'l Monetary Fund [IMF], *Haiti: Interim Poverty Reduction Strategy Paper*, IMF Country Report No. 06/411 at 7 (Nov. 2006), available at <http://www.imf.org/external/pubs/ft/scr/2006/cr06411.pdf>.

that pay the lowest wages in the region. These wages currently average two or three dollars a day. In real terms, they are worth less than a quarter of their 1980 value.

The economic elite gained their power not only through the political, economic, and social policies they created to exclude and exploit the majority; they also employed violence to gain their privilege. It is only violence that allows the elite to retain them. For much of the twentieth century, Haiti's military and paramilitary forces—with substantial amounts of U.S. support—were able to preserve these privileges on their own. Over the course of the 1980s, however, it began to look as if local military repression might no longer be up to the job. Lavalas, the massive popular mobilization culminated in 1990 with the landslide election of the liberation theologian Jean-Bertrand Aristide, the first democratically elected President in the history of Haiti. Suddenly the majority of excluded, ordinary people began to participate in the political system for the first time. As Robert Fatton states, “panic seized the dominant class. It dreaded living in close proximity to *la populace* and barricaded itself against Lavalas.”<sup>94</sup>

Nine months later, the army dealt with this popular threat in its usual violent way, with a *coup d'état*. Over the next three years the army systematically murdered approximately 5,000 Aristide supporters. When the United States eventually allowed Aristide to return in October 1994, he took a surprising and unprecedented step: he abolished the army that had deposed him. It is impossible to overestimate the importance of this act. It has been called the greatest human rights development in Haiti since emancipation.<sup>95</sup> It is wildly popular. In 2000, the Haitian electorate gave Aristide a second overwhelming mandate when his party *Fanmi Lavalas* won more than ninety percent (90%) of the seats in parliament.<sup>96</sup>

More than anything else, what has happened in Haiti since the election of Aristide in 1990 must be understood as the playing out, perhaps even the resolution, of this dichotomy—democracy or repression led by the army. In 2000, the overwhelming victory of the *Fanmi Lavalas*, at all levels of government, raised the prospect of genuine political change in a context in which there was no obvious extra-political mechanism—no army—to stop it. In order to avoid this outcome, the main strategy of Haiti's small ruling class has been to redefine political questions in terms of “stability” and “security”, in particular the security of property and investments.

As soon as Aristide was re-elected in 2000, a systematic campaign to bankrupt and destabilize his second government set the stage for a paramilitary insurrection and another *coup d'état*. In 2004, thousands of United States troops again invaded Haiti (just as they did back in 1994) in order to “restore stability and security” to their “troubled island neighbor.” An expensive and long-term United Nations

---

94. ROBERT FATTON, JR., HAITI'S PREDATORY REPUBLIC: THE UNENDING TRANSITION TO DEMOCRACY 86 (2002).

95. Brian Concannon, Jr., *Lave Men, Siye Ate: Taking Human Rights Seriously*, in LET HAITI LIVE: UNJUST U.S. POLICIES TOWARD ITS OLDEST NEIGHBOR 75, 92 (2004).

96. Peter Hallward, *Securing Disaster in Haiti*, LINKS, Jan. 21, 2010, <http://links.org.au/no/de/1476> (citation omitted).

stabilization mission, staffed by 9,000 heavily armed troops, soon took over the job of helping to pacify the population and criminalize any resistance. By the end of 2006, thousands more Aristide supporters had been killed.<sup>97</sup>

Between 2006 and 2009, a clearly intimidated (“stabilized”) Préval Haitian government agreed to continue privatizing the country’s remaining public assets, vetoed a proposal to raise minimum wages to five dollars a day, and banned *Fanmi Lavalas* and several other political parties from participating in the next round of legislative elections.<sup>98</sup>

When it comes to providing stability, today’s United Nations troops are clearly a big improvement over the Haitian army. But the latter is beginning, once again, to “remerge from the shadows.” The elites continue to try to restore their own army. The fight between repression led by the army and democracy continues unabated. The outcome of this “struggle” will certainly be instrumental in deciding the fate of the Haitian people.

The conversion to a non-Duvaliérist regime is only one of the transitions Haiti must face. The other is internalization in the hearts and minds of the people of the rule of law, and to its everyday practice in both the public and private spheres. But there is a strange cycle that seems to recreate itself in Haiti. If Duvaliérism impedes the creation of the rule of law, the weakness of democratic institutions keeps Duvaliérism alive. The Haitian “problem” is not merely political. Rather it is much more complicated. It resides in the rigid class structure, in the military organization of a nation that seems to be at war with itself, in an economic system that tends to discourage production and investment, and in socio-cultural elitism.

Legitimacy of the State requires the participation of Haiti’s majority in deciding the fate of the country. It requires the recognition by all sections of Haitian society—particularly the urban elites and their foreign partners—that Haiti is fundamentally a nation of extremely poor, rural peasants and ghetto residents who must somehow be incorporated into the life of Haiti as equal partners. To put it another way, Haitian democracy will have to develop in the rural areas and in the city ghettos or it will simply not be able to develop at all.

Under the best of circumstances, a nation such as Haiti cannot be changed structurally without some yielding of power by the haves—the economic elite. But, of course, rulers who profit from stasis are disinclined to risk change. Moreover, if it is to be the policy of the United States and the rest of the international community, which it appears to be, to sustain at all costs the present distribution of economic power in Haiti, hardly anything can be done that will necessarily have long-range beneficial political and social consequences and thus allow Haiti to become a constitutional democratic nation.

---

97. *Id.*

98. Jeb Sprague, *Haiti Classquake*, HAITIANALYSIS, Jan. 19, 2010, <http://www.haitianalysis.com/2010/1/19/haiti-s-classquake>; Hallward, *supra* note 96.

A second prominent obstacle that nations face in the transition process is the corrosive power of the phenomenon known as corporatism.<sup>99</sup> Indeed, for the transition process to succeed, the people must dissolve the network of *de facto* power relationships, which corporations create and jealously protect by taking advantage of the power vacuum left by representatives of popular sovereignty. Under the umbrella of authoritarian rule, a number of social groups representing particular interests sculpt a place for themselves after a bargaining process which includes their support for the present regime. Such groups include the military, religious organizations, coalitions of entrepreneurs, trade unions, and even the so-called independent press. Once democratic rule is established, these groups stubbornly resist relinquishing their power to representatives of the people.

Corporatism is usually expressed and functions in complicated ways. There is some control by the State over these interest groups and organizations, many of which are part of civil society, and there are a variety of official and unofficial mechanisms that are used to alter their operation.<sup>100</sup> Simultaneously, however, these organizations exert enormous pressures upon government actors and agencies. These pressures allow the corporative forces to obtain favored treatment of various kinds, amounting to a legal monopoly of particular interests. Sometimes this monopoly power of the corporative interests is unaccompanied by any significant state influence over these forces. In other situations, alternative legal or even constitutional privileges short of monopoly may be granted that shield the organization from the raw competitive forces of popular expression, such as a free market.

Corporatism is an insidious and powerful force, and it is very difficult to overcome. Haiti is a harsh example of the devastation created by corporatism. Between 1991 and 1994 the military corporative forces assumed total power and influence in, and completely violated and destroyed any semblance of democratic practices and institutions.<sup>101</sup> The military forces consolidated their rule by intentionally and ruthlessly suppressing Haiti's once diverse and vibrant civil society. They assassinated approximately 5000 people, brutalized and tortured thousands of others, and forced perhaps 500,000 people to go underground.<sup>102</sup> Until the 1990 *coup d'état*, Haiti boasted a huge assortment of peasant associations, grass-roots development projects, trade unions, student organizations, church groups, and independent radio stations. In the rural areas, local groups, generally known as "popular organizations", formed literacy programs, rural development

---

99. For an interesting discussion of the concept of corporatism and its relationship to the state and society in Latin America, see *AUTHORITARIANISM AND CORPORATISM IN LATIN AMERICA* (1977).

100. For example, some governments allow private firms to control or monopolize certain industries such as the power and telecommunications industries.

101. During this period, several thousand Haitians were murdered, illegally arrested, detained, tortured or forced into hiding. Unfortunately Aristide's reinstatement to office did not totally stop the violence. Indeed, political murder continued after his return and into President Préval's term. STOTZKY, *supra* note 48, at 28–29 nn. 51 & 54.

102. See Interview with Cathy Maternowska, Anthropologist, (Nov. 8, 1993 - Aug. 1, 1995); Interview with Jean-Jean Pierre, Journalist, (1994–1995); Interview with Leon-Francois Hoffman, *supra* note 62.

projects, and farming cooperatives, often with international support. The military systematically repressed virtually all forms of independent associations in an attempt to deny the Haitian people any organized base for opposition to the brutal dictatorship. Their apparent goal was to push Haiti back into an atomized and fearful society reminiscent of the Duvaliér era. The strategy seemed to be that even if the international community successfully returned Aristide to power, he would find it almost impossible to transform his popularity into the kind of organized support necessary to exert civilian control over the army and in creating a democratic institutional structure that would aid in that endeavor. The cost to the Haitian people has been astronomical. At that time, the very civil society that Haiti needed and still needs to confront its economic and social problems had nearly been destroyed.

Aristide's major accomplishment as President was to abolish the military.<sup>103</sup> Since 1994, the democratically elected governments have attempted to prosecute military officials who were involved in massive human rights violations. For example, in August 1995, a mid-level member of the paramilitary group Front for the Advancement and Progress in Haiti (FRAPH) was convicted of the murder of Antoine Izmerly, a prominent businessman and supporter of Aristide. This was the first time in Haitian history that anyone had been convicted of a major human rights violation.

There have also been on-going investigations of other human rights offenses committed by the *de facto* regime between 1991 and 1994 since the return of Aristide in 1994. On September 20, 2000, after an investigation that started shortly after President Aristide's reinstatement in 1994, the Haitian government began the prosecution of dozens of former military leaders for the massacre of at least fifteen residents of a poor neighborhood in Gonaïves in April 1994. The Raboteau slayings were part of a series of attacks undertaken by the coup leaders to break support for Aristide. At the trial, only twenty-two of the defendants actually appeared in court. On November 9, 2000, sixteen of these twenty-two defendants were convicted of taking part in the massacre. Twelve of the sixteen, including the military commander of the town at the time of the massacre, Captain Castera Cénafls, and a grassroots figure turned paramilitary leader, Jean Tatoune, were sentenced to life in prison with hard labor. The other four defendants received sentences of up to nine years imprisonment. Six defendants were acquitted. All of the convicted defendants also were ordered to pay the equivalent of \$2,300—a large amount in Haiti—to a fund to benefit the families of the victims.

On November 16, 2000, a Haitian court sentenced the fifteen defendants who did not appear in court, and were tried *in absentia*, to life in prison with hard labor. The absent defendants include coup leaders Raoul Cedras and Philippe Biamby, both of whom received asylum in Panama; former Port-au-Prince police chief, Michel Francois, who is in Honduras; and paramilitary leader Emmanuel Constant, who cut a deal with the C.I.A. and lives in New York City. Prosecutors alleged that

---

103. Interview with Brian Conconnan, Executive Director, Inst. for Justice and Democracy for Haiti (1995-2010).

they masterminded the attack. Lawyers were not allowed to defend the absent defendants. Judge Napla Saintil tried them without a jury exclusively on the basis of a 172-page bill of accusation presented to the court by the Haitian government prosecutors. The absent defendants will be arrested if they return to Haiti, but would have the right to a new trial if they return. Moreover, the Haitian government has asked a number of nations, including the United States, to extradite several former military officials who have been indicted in Haiti for committing murders during the coup period. The United States has refused to do so.<sup>104</sup>

Continuing the prosecutions has been an almost impossible task because security is an absolute necessity to pursue this strategy. With approximately 250,000 automatic weapons cached around the country,<sup>105</sup> stability remains fragile. The failure to understand corporative power and the fear of placing international forces in harm's way led to a failure by the multinational forces to disarm the military, in spite of the fact that such a campaign was clearly compatible with the United Nations Security Council Resolution 940.<sup>106</sup> Part of this misunderstanding was the belief that removal of all privately held weapons in Haiti would have seriously disturbed the balance of power in Haitian society, dangerously concentrating all fire power in the hands of a democratically elected government whose long-term commitment to the rule of law and democracy could not be guaranteed. This grave error has led to unnecessary suffering. Indeed, the international community's failure to disarm the former military forces has led to a surge in garden variety crimes, attacks on Parliament and on the Haitian National Police, an increasingly large number of drug related murders committed by former military officials who have formed criminal gangs,<sup>107</sup> and the second violent overthrow of the democratically elected Aristide government.

The Catholic Church is another significant corporative source in Haiti. The Catholic Church hierarchy in Haiti has for years been siding with the military and the economic elite. It has even been a catalyst for the repression of those who publicly practice Vodoun, even though almost every Haitian, including the economic elite, practices it in private. Moreover, the Vatican is the only nation in the world to have recognized the political legitimacy of the 1990 military coup, and the church hierarchy has consistently opposed Aristide and other democratically elected officials. Local churches, however, have long helped the people of Haiti by nurturing the populist groups in rural areas. For example, the Catholic Church has long sponsored literacy programs for the peasants.

The entrepreneurial sector constitutes another corporative source directed at the democratically elected government. It seeks to obtain a variety of privileges or protective measures and preserve those previously secured. In Haiti, the

---

104. Interview with Brian Concannon, Dir., Exec. Dir., Inst. for Justice and Democracy for Haiti (1995-2010). This information is personally known to me because I helped investigate the murder and prosecute the Zimbabwe case. Brian Concannon was instrumental in helping the Haitian government prosecute the Raboteau slayings.

105. See Interviews with United States Army official and United Nations officials.

106. See S.C. Res. 940, U.N. Doc. S/RES/940 (July 31, 1994).

107. See, e.g., STOTZKY, *supra* note 48.

entrepreneurial sector has attempted to boycott many measures designed to achieve progressive levels of taxation.<sup>108</sup> It has also pushed hard for the complete privatization of nine state owned industries, hoping to secure them and reap huge profits.<sup>109</sup> This elite class has ruled Haiti since its independence in 1804, using the state resources as its personal bank account and keeping the vast majority of Haitians in a state of extreme poverty, even slavery.

The great enigma, which is directly related to the controversy surrounding the first feature of the consolidation—the economic and social crisis—is whether the previous dominant economic groups remain all-powerful, or have even increased their power, by having changed their position as privileged contractors of the state to positions as owners and thus monopolistic providers of the recently privatized public services.

In Haiti, the question has a rather unusual twist to it. It is whether the previous dominant economic groups remain powerful or have been reduced to puppets of the military during the dictatorship, and if so, whether they will reassert their power or yield some of it to the people. During most of Haiti's history, the military did the bidding of the elite classes, protecting their economic monopolies and brutally suppressing the vast majority of the poor. In turn, the rich paid off the dictator. During the coup, things changed. The military took over the country's ports and landing strips, thus enabling its high-ranking officers to prosper in the illicit drug trade. Even more significant, the military increasingly prospered through its control of state monopolies. It was alarm over these incursions into the economy that led the economic elite to support, however tentatively, the return of Aristide to office. The question remains, however, what will the economic elite do now that the military dictatorship is over and two successive democratic governments have come to power?

There is a further complication. The corporative actors do not, however, play the same role in each nation. For example, the Catholic Church does not function in Haiti as it does in Argentina and trade unions hold different positions in Haiti than in Brazil. But the script is nevertheless repeated in each country because the formal creation or establishment of democratic rule is simply not sufficient to destroy the corporative power relationships built up during the dictatorship periods. The corporations try to preserve their power relations and privileges through the transition, generating different types of crises, such as a military or economic

---

108. Indeed, directly after the 1990 election, President Aristide called in the prominent families of Haiti to discuss their refusal to pay taxes. He told them that he would not impose taxes retroactively, even though they owed incredibly large sums of money. He stated that they would not have to pay taxes for the many years that they refused to pay before his election. Nevertheless, they would have to pay taxes in the future. The elites responded by telling Aristide that he would not be in office long enough to collect their taxes. Less than a month later, he was ousted from office by a military coup. Interview with President Aristide (1991-1994); STOTZKY, *supra* 48, at 90 n.18; Interview with Brian Concannon, Director, Executive Director, Institute for Justice and Democracy for Haiti (1994 - 2010); Interview with Leon-Francois Hoffman, *supra* note 62.

109. Interviews with the Power Elite Families in Haiti (1994 - 2008). In these interviews, these elites constantly refer to their desire to maintain their monopolies on state-owned industries, particularly the power and communications industries.



threat, which exert tremendous pressure on the fragile economic and political regime.

Connected in a multitude of ways and indeed inextricably bound up with these two features of the transition and consolidation process (the economic, political, and social crises and the problems of corporatism) is a third factor—the failure to fulfill the requirements of the rule of law in both the formal and informal aspects of public and private life. In Haiti, as in virtually every other nation undergoing the transition from dictatorship to democracy, this failure manifests itself in the concentration of power solely in the executive branch of government, leading to massive human rights abuses and a total disregard for the functions of the other branches of government. For example, during the coup period (1991-1994), members of the Haitian armed forces systematically assassinated and tortured thousands of people, including government officials who attempted to uphold the rule of law.<sup>110</sup> Indeed, the military blatantly ignored judicial orders to arrest soldiers or officers accused of human rights abuses.<sup>111</sup> It ignored the basic rights guaranteed by the Constitution and any laws passed by Parliament which threatened its hold on power.<sup>112</sup> Indeed, Haitian prisons were and remain death traps. Innocent pretrial detainees are often incarcerated for years without being given a judicial hearing. Cells are packed like sardine cans, causing illness and death. Moreover, there is no judicial independence. In light of this and Haiti's history of these abuses, a Creole proverb aptly summarizes the Haitian people's view about law: "Law is paper; bayonet is steel."

The violation of legal norms, however, is not restricted to formal military or de facto government officials. Unfortunately, such behavior is a distinguishing mark

---

110. The Platform of Haitian Organizations for the Defense of Human Rights (La Plate-Forme des Organismes Haïtiens de Défense des Droits Humains) documented 1,021 cases of extrajudicial executions from October 1991 to August 1992 and estimates the number of cases could be as high as 3,000. Memorandum to the Org. of American States (OAS) Comm'n to Haiti 3, Aug. 17, 1992. Perhaps several thousand more Haitians have been murdered since that time, and thousands have been illegally arrested, detained, and tortured. Indeed, estimates suggest that at least 5,000 and perhaps as many as 6,000 people were executed between the occurrence of the 1991 coup and the reinstatement of the Aristide government. A knowledgeable observer in Haiti estimates that between 200,000 and 400,000 people were also forced into hiding from the time the coup occurred until after Aristide's reinstatement. Some people were so frightened of the attachés that they remained in hiding for months after Aristide's return.

Unfortunately, Aristide's reinstatement to office did not totally stop the violence. For example, during the week of March 25, 1995, approximately twenty-five people were murdered in Port-au-Prince alone. Many of these were political murders. On March 29, 1995, a prominent coup supporter was assassinated, and unsubstantiated allegations made by U.S. officials suggest that the interior minister may have ordered the killing. Further investigation suggests, however, that either paramilitary forces or criminals involved in the drug trade were behind the murder. Political murders of Aristide supporters continued throughout President Aristide's final months in office, and into President Préval's term. The renewed violence makes it clear that, while the approximate eight-month United States military occupation, the several-month Multinational Force (MNF) occupation, and the close to two year United Nations peace-keeping force occupation may have subdued turbulence in Haiti, they have clearly not eliminated the notorious culture of the political murder and paramilitary terror. *See Editorial, Haiti, after Six Months*, N.Y. TIMES, Mar. 31, 1995, at A30.

111. *Id.*

112. *See id.* During the most recent interim government period, 2004 - 2006, similar human rights abuses occurred.

of political and social life at large, and has existed throughout the nation's history. This failure to follow the rule of law is evident in both social practices and in the actions of governmental officials.

This tendency toward unlawfulness does not, however, infect only public officials. Unfortunately, it equally infects the general society. This mentality correlates with a general trend toward anomie in society as a whole. It manifests itself in such things as enormous black markets, tax evasions, corruption in private economic activities, nonobservance of efficient economic norms, and noncompliance with the most basic rules of society, such as elementary traffic and urban regulations.<sup>113</sup>

The general tendency towards illegality in public and social life normally appears in one of two ways. People may adopt a "finalist attitude", where they agree with the goals of a rule but do not follow the commands of the rule. Conversely, they may adopt a "formalist attitude", where they blindly comply with the commands of the rule but ignore its goals. Both of these attitudes are incompatible with and thus contribute to the continuing difficulty of securing adherence to the rule of law. They adversely affect the attempt to create a moral consciousness in the citizenry.

The problem may be intractable because it is so pervasive and, therefore, difficult to change. This unlawfulness mentality is often the product and cause of collective action problems, such as those with structures that game theory labels "prisoners dilemma," "assurance game," and "chicken game." Frequently, the combination of expectations, interests, possibilities of actions, and their respective payoffs is such that the rational course of action for each participant in the process of political or social interaction advises that person not to comply with a certain norm, despite the fact that general compliance with it would have been for the benefit of everybody in—Pareto's term—or almost everybody.

This kind of anomie may be called "dumb anomie,"<sup>114</sup> since it refers to situations in which the compliance with a certain norm would have led the social actors to a more efficient result—in Pareto's terms—than what they obtain in the actual situation of not observing norms. This "dumb anomie" is intimately connected with both the stunting and the reversal of economic and social development. First, there is a direct conceptual connection between that kind of anomie and failures in economic activity. Indeed, "dumb anomie" is identified by the results of processes of interaction, including economic ones, which do not observe certain norms. Second, it is clear that anomie affects that process of capital accumulation. For example, when the behavior of people intervening in the process of production—even that of judges and government officials—is not sufficiently predictable, productive investments decline or claim disproportionate profits.

---

113. Argentina is an example of all these problems. See, e.g., *Poll Finds Corruption Alive, Well in Argentina; Bribery and Tax Evasion Remain Rampant, Survey of Top Executives Shows*, ST. LOUIS POST-DISPATCH, May 4, 1998, at A7.

114. Carlos S. Nino also used this term in describing this phenomenon in Argentina. See CARLOS S. NINO, *UN PAIS AL MARGEN DE LA LEY* (1992).

Therefore, for a successful transition to democracy to occur in Haiti, it is critical for the international community to help Haitians consolidate the rule of law. This is important not only to secure respect for fundamental rights and for the observance of the democratic process, but also to achieve satisfactory levels of economic and social development. But the international community seems to have misunderstood the contours of the rule of law, placing its resources almost solely into "strengthening the judiciary". Even those efforts have not appreciably improved the system of justice. In point of fact, despite the international community's best efforts to help strengthen the integrity of the judicial system, it remains corrupt and inefficient. Indeed, years of corruption and governmental neglect have left the judicial system nearly moribund. For example, a shortage of adequately trained judges and prosecutors, among other systemic problems, has created a huge backlog of criminal cases, with many detainees waiting months or even years in pretrial detention before getting a court hearing.<sup>115</sup> If an accused person ultimately is tried and found not guilty, there is no redress against the government for time served.<sup>116</sup> While it is certainly necessary to strengthen the judiciary, this is simply insufficient to achieve the goal of establishing the rule of law in Haiti. But strengthening the judiciary means helping to overcome the problem of "dumb anomie." The judiciary must be improved by making it more independent, reliable, and efficient. To achieve that goal, Haiti must satisfy the guarantees that derive from the ideas of due process of law.

#### V. AN ALTERNATIVE VISION

While many of these problems and the legacy of their history can only be overcome by the Haitian people, the international community's help is essential. But only the correct international incentives directed at the real problems will lead to a viable, sound democratic revolution in Haiti. So far, these incentives have not been properly employed. The deepest roots of Haiti's problems lie not simply (or most significantly) in the country's politics or in its cultural history. Institutional reforms of the type championed by the international community—such as total privatization of state owned industries or "judicial reform"—will simply not work until the more serious problems are confronted. While the moral turpitude of the elites is real, Haiti's political problems lie in the social and economic organization of the country. To put it another way, Haiti's crisis lies in social inequality and economic maldistribution. Unless and until these difficult issues are addressed, there is little hope for positive changes for the millions of Haitians trapped in despair and destitution. If they are addressed, however, it is likely that positive changes in the political sphere will follow. The only hope Haiti has for achieving a valid democracy is the creation of a new socioeconomic arrangement, which will be difficult to initiate, and even harder to maintain. But the absence of material

---

115. BUREAU OF DEMOCRACY, *supra* note 65.

116. BUREAU OF DEMOCRACY, *supra* note 65.

deprivation is a prerequisite for the conditions necessary to create a constitutional democracy. What steps must be taken to achieve this goal?

An energized, vital constitutional democracy means much more than holding periodic elections. It requires an environment of personal security for people to pursue their desires, their professions, to move about freely, and to explore new ideas. Democracy also means, among other things, the building of vibrant institutions of justice and law and the full blooming of civil society—the broad array of political parties, independent media, independent labor unions, and nongovernmental organizations, such as women's groups, all of which encourage political and social participation. While these choices—and democracy is always a choice—cannot necessarily be imposed by the international community, they certainly can be encouraged by it.

While many nations are reaching for democracy, what are the policy choices for changing the political economy? The overriding characteristic of the political life and discourse of nations in the transition process is a frustrated desire to escape the choice between a nationalist-populist project and a neoliberal project. The rejection of these alternatives and dictatorship has a deeper meaning than is traditionally understood. It is a revulsion against a feigned public life, which is in fact little more than a weapon or disguise of private interests. The problem is not unique to Haiti. It is reflected in the institutional structures of many developing nations.<sup>117</sup> The dominant regimes of the less-developed economies, and even their critics, often start with the desire merely to imitate and import the institutional arrangements of the rich industrial democracies. They do this in the hope that from similar institutional devices, similar economic and political development will result. But such imitation has not led to these desired results. The failure of these efforts at emulation may nevertheless be useful to the development of new and experimental institutional structures, which may shed light on the suppressed opportunities for transformation. But Haiti and many of these nations have not yet started on this path.

The import-substituting protectionist style of industrialization and the pseudo-Keynesian public finance of a national-populist approach are unable to deal effectively with the huge problems facing these nations. Latin America, for example, still faces the problems caused by past periods of hyperinflation and stagnation created by irrationally closed economies and massive public spending.<sup>118</sup> Neoliberalism (*neoliberalismo*), the single-minded pursuit of foreign investment and its accompanying austerity and inequality, is unable to service the real conditions of sustained economic growth.

Neoliberalism's rise to the status of religious doctrine is largely due to the influence of the United States, particularly in regulating and controlling the conduct of international monetary and trade organizations. The Reagan Administration

---

117. This notion is reflected in Latin American nations where a very small group of very rich people control the government. See, e.g., *Latin America in Deep Recession—South America Suffering from Succession of Economic Shocks*, S.F. CHRON., Nov. 22, 1990, at B6.

118. Argentina and Brazil are prime examples.

pushed the Latin Americans into pro-business austerity programs and set the tone for a worldwide reduction of government rule. Neoliberalism's acceptance is also due to the policies of the World Bank and the International Monetary Fund and to the wealth of its corporative backers in a region where money matters above all else in politics. Nevertheless, globalization has not had the desired consequences.

What is clearly needed now is to somehow fix neoliberalism's major flaw—chiefly that it does not help the poor, vast majority live a dignified life. Instead, corporative power creates wealth for a small minority, while almost enslaving the majority. If democracy seeking governments do not spread the benefits of globalization, countries such as Haiti will remain divided between a very small group of ultrarich economic elite and a very large group of desperately poor and marginalized people.

Unlike neoliberalism's claim that government should play a minor role in the economy, real democratic change requires government to play an important and dynamic role. At a minimum, the international community must encourage these governments to pursue locally designed policies to draw the poor into the global economy. To achieve this minimal goal, these governments must be given incentives to pursue a vision of a political economy that is quite different than the image traditionally suggested.

In political economy terms, promising alternatives which will allow a flowering of democracy might develop in a seriously underdeveloped nation such as Haiti in a variety of rather experimental directions. Each of these experiments, of course, must be continuously monitored so they can be changed as they unfold to meet the requisite goals of democratization. This method is one of the few ways that a positive transformation may take place in Haiti. Flexibility is a key to success.

Moreover, what we may be able to say and do about the future possibilities of democratization depends crucially on our interpretation of contemporary political, social, and economic history. The radical change many of these nations are making from inward oriented statist growth is still in full swing. Macroeconomic policy makers still wrestle with price instability and proper exchange rate regimes. External threats and internal mistakes only prolong the transition and generate uncertainties that exacerbate the problems. Simultaneously, microeconomic changes, technical leaps and innovations, the legal evolution of firms, and the use and disbursement of property rights are still more in flux than fixed on the eve of new cycles of growth or retraction.

At first blush, it may appear that Haiti's relationship to the world economy leaves it with relatively few options. But I believe that options do exist. Although we understand large-scale transitions imperfectly, what we do know is that decisions made while institutions and partnerships are being created and forged have significant—indeed enormous—subsequent effects. Thus the conjuncture of deep structural transformation means that what these nations do now will shape what they can do later. It is not just the structures, but also the rules that will shape them, that are changing.

Three major areas of concern are evident in the social, political, and economic spheres. The first involves money. Macroeconomic instability is a major force in undermining the ability of people, rich and poor alike, to save and invest for the long term view. International sources may help, but without local savings or investment, they often leave these nations exposed to forces over which they have the least control.

The second area of concern is the legal structure girding ownership and use of property rights. Reform of corporate law and the emergence of a new regulatory regime (paradigm) may help private parties to seize upon new property rights to create new enterprises and new industries. In both of these areas, the liberalization of the market is the factor that should give the single biggest boost to long-term growth. Increasing growth, however, is not the same as sustaining it. In both of these areas, rule making and enforcement will certainly become the cornerstones for growth.

The third concern is the approach to human capital. Both the long-term view and long-term progress will be shaped by human skills and aptitudes. In Latin American and Haiti, for example, the educational systems are impoverished. Good, sound education is scarce and increasingly hard to find. It is, therefore, expensive and unequally distributed. If it is true, as many claim, that education yields increasing returns, this is clearly a matter of urgency for these nations.

These three areas of concern do not necessarily add up to an indictment of the state in Haiti. Rather, they are best seen as an injunction that the state performs its role as a state, with public duties and public authority. Indeed, there are public goods—sound currency, security, the rule of law, and education—for which the state has an overwhelming, indeed incomparable comparative advantage. Long-term growth in this region may well depend on governments' abilities to appreciate and exploit their own mandates and resources. An active state is essential to the success of such democratic reforms.

If governments are to play this major role, what steps can they take? First, as I have already suggested, it is important that Haiti and these other nations take macroeconomic stabilization very seriously. One way of doing this is through a dramatic rise in and focusing of the tax rate which would impose upon the privileged classes and regions of these nations the costs of public investment in people and in infrastructure. It would be utterly unrealistic for these nations to take another approach and conceive of a sound financial system as one based on a drastic lowering of governmental expenditure rather than on a raising and rationalization of taxes. There needs to be a strong preference for a universal, direct consumption-based tax—taxing, in a steeply progressive way, the difference between income and savings—as the means to finance the state while promoting capital formation and productive investment. Countries like Argentina and Haiti will need large amounts of international aid for a long period to augment these taxings, because these nations are often in financial crisis. But this aid must not be based on the same schemes that have harmed their economies and helped lead these nations into their present predicaments.

Second, there must be a push to train the poor majority in a variety of skills needed in the global economy. Simultaneously, the state must help create the conditions for an "anti-dualist" political economy. These democratically minded governments have to aggressively attack and overcome the internal division of these nations into two (or more) economies that are only tentatively and hierarchically connected. What is needed is the consolidation and development of a technologically skilled group of people—a vanguard—in both the public and private sectors, and the use of this group to lift up and transform the immense, backward second economy. This approach would also suggest attempting joint public-private ownership of enterprises and encouraging decentralized capital allocation and management. These two or more economies cannot be allowed to become the platform for an antiquated fordist-style industry that is unable to compete abroad except through internal wage repression and that is incapable of transforming the second economy. For example, networks of small and medium-sized enterprises represent the most dynamic forces in many of the economies of the developing nations and are even paralleled by external experiments in the large businesses with the greatest potential for growth and innovation. These intimations of an alternative, less conforming industrial future—changing the organization of firms, perhaps by making them more democratic, as well as the character of regional economies within the country—need to be developed by a deliberate economic program, sometimes with the determined help of the international community. Indeed, the international community must play a central role in this experiment through monetary and technical assistance, including training people in highly technical skills.

Third, if the breakdown of corporative control of the economy is to succeed, the strict requirements of capitalism must be imposed on the so-called free market capitalists through the privatization of the private sector. Because market forces tend to concentrate wealth and power, a democratically minded government must ensure that no barriers exist to participation in the market. Indeed, the more players in the market, the less concentration of wealth and power. Otherwise, there is the omnipresent risk of the dominant player whose power may skew the debate or the policy toward his own self-serving ends, which may not be democratically optimal ones. Therefore, the government must control monopoly, encourage business formation, and even compete to counteract the power of the dominant big-business actors. In addition, the activist state must protect local businesses from the overwhelming power of international influences. Local voices remain unheard when powerful external forces control the media, the economy or the political sphere.

There are, of course, many positive aspects to a private market. If the economy is successfully privatized, this will mean real competition, real refusal of the capitalization of profits through the socialization of losses, real antitrust, real markets in corporate control, real constraints on nepotism and inheritance, and real private responsibility for the costs of public investment necessary to meet some of these goals. Such a capitalist regime requires parliament to pass laws, and the

executive and the courts to enforce them, opening the market so everyone can compete on a somewhat level playing field.

These governments must also develop a parallel set of institutions to compete in the marketplace. Public companies should be created and developed to compete with the private ones. Moreover, these governments must impose on these public companies the requirements of serious and decisive competition and independent financial responsibility. Total privatization of publicly owned companies is not necessarily a good idea.

The last part of the plan is educational. There must be a massive investment in people and infrastructure, financed by taxes on the people with the goods—those who possess the wealth. There must be a priority of such claims on the budget, backed by procedural devices with executory force. In addition, preventive public health, sanitation, and food supplementation need to be given preference over therapeutic medicine. Even more important for democratic change is the fact that the people must be educated. Free public schools must be open to everyone, and literacy programs created and developed.<sup>119</sup> There must also be a shift of the control of education away from the memorization of facts and towards an emphasis upon the mastery of generic practical and conceptual capabilities.

In the organization of government, politics and civil society, the alternative to nationalist-populist or neoliberalist projects may take the form of a public-law counterpart to the political economy I have just outlined, animated by the same concerns and moving toward the same goals. Experiments should be attempted in these areas as well. For example, structural reforms require at least two sets of institutional innovations. First, a merger of the electoral characteristics of presidential regimes is needed, posing a periodic threat to oligarchic control of political power. There must be a facility for rapid resolution of impasse through priority accorded to programmatic legislation, liberal resort to plebiscites and referenda, and perhaps the vesting of power in both the legislative and executive branches of government to provoke anticipated elections in the face of impasses over the direction any particular country should take. Second, measures must be taken to heighten the level and to broaden the scope of political mobilization in society, especially through the strengthening of the political parties, public financing of political campaigns, increased free access to television and radio, and the breakup of any broadcasting cartel. Direct democracy must be encouraged at all levels of society. Certainly the internet must become a useful device for democratic change.

The macropolitics of institutional change must be complemented by a micropolitics confronting the logic of habitual social interactions. The typical elements of this logic include a predominance of patron-client relations, with their pervasive mingling in the same associations and encounters of exchange, power,

---

119. A plan to create a serious education system in Haiti has been proposed to the Interim Haiti Recovery Commission. But proposals and actions are, of course, two different things. See Editorial, *Haiti's Schools*, NY TIMES, Aug 16, 2010, available at <http://www.nytimes.com/2010/08/17/opinion/17tue1.html>.



and sentimental allegiance. There is frequently an oscillation between rule formalism and personal favoritism, and each creates the opportunity and need for the other. There is also a stark contrast between the treatment of "insiders" and "outsiders," and the consequent shortage of impersonal respect and reliability.

A democratic system must be capable of challenging and changing both the established arrangements of the economy and the polity, and the intimate habits of sociability. In this task, those who yearn for democracy must combine a strategic approach to the satisfaction of recognized material interests with the visionary invocation of a reordered society. In nations striving for democracy that are trapped in these impoverished visions and systems, nothing is more important than encouraging the belief in the people that structural change is possible. The Haitian government and the international community must encourage such beliefs and actions.

Almost sixteen years after the deployment of the multinational force in 1994, it is clear that Haiti's struggle for internal security and economic, social, and political development—its attempt to become a democratic nation—will continue to be a tortuous one. Unsettled political conditions, weak management of the economy, public indifference to the electoral process, and grinding poverty underscore how poorly the international intervention has succeeded in helping to create the conditions for democracy. Some may, therefore, conclude that only Haitians can overcome the legacy of their history. Even if one ultimately reaches this conclusion, it is also correct to add that significant help from international community is essential if Haitians are to achieve their goal. But only the correct international incentives directed at the real problems will lead to a democracy in countries like Haiti. So far, those incentives have simply not been properly employed.

## VI. A CONSTITUTIONAL ADJUDICATIVE TRADITION

The requirements of constitutionalism suggest another crucial point in the creation and development of constitutional democracies—the importance of a constitutional adjudicative tradition. In the United States, for example, the establishment of a constitutional adjudicative tradition and certain forms of remedies, such as structurally transforming injunctive remedies, have aided in the process of protecting human rights by establishing methods of rational discourse that have helped to develop a moral consciousness in the citizenry. This tradition, exemplified by *Brown v. Board of Education*<sup>120</sup> and its progeny, and the decisions interpreting the guarantees of the Bill of Rights,<sup>121</sup> has led to the protection of human rights.

---

120. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

121. Although cases such as *Brown v. Board of Education* (banning racial segregation in public schools), and *Baker v. Carr*, 369 U.S. 186 (1962) (recognizing the principle of one person-one vote), are often viewed as the most significant modern decisions, and although they were certainly great steps forward for the nation and the Constitution, I believe that the decisions incorporating the guarantees of the Bill of Rights were even more significant. These decisions bind the states to almost all of the

Many Latin American and other nations striving for constitutional democracies have failed to develop this type of constitutional adjudicative tradition. Although fragile, such a process can be useful to developing democracies. My thesis is that the process of constitutional adjudication has been significant in the United States precisely because it establishes a tradition that ultimately protects individuals against the arbitrary actions of government. This tradition, by helping to create a moral consciousness in the citizenry through the process of rational discourse, has acted as a barrier against abuses by the government.

At the same time, however, a caveat is in order. The constitutional adjudicative tradition is not a magic elixir that will cure all the diseases of any society attempting to consolidate a democracy. It may be that such a tradition is not wholly sufficient to protect these rights even in a developed democracy. In the United States, for example, it is also true that the tradition has not always been faithful to the promise of developing and perpetuating a moral consciousness in the citizenry. Indeed, since the early 1970s, the Rehnquist-led Court, and now the Roberts-led Court, have interpreted Bill of Rights' guarantees in a manner calculated to restrict their scope severely. The Bush Administration attempted to dilute these precious rights even further.<sup>122</sup> I believe that it is not the necessary outcome of such a tradition, but the failure to adhere to its stringent demands, that has led to an erosion and derogation of the very human rights that are meant to be celebrated.

Furthermore, the methods of adjudication established in the United States are not necessarily transferable to developing democracies. Differences in cultures, history, and the role of law in each specific nation shape and define the methods of adjudication. Nevertheless, I believe that the establishment of a constitutional adjudicative tradition in these nations making the transition to democracy will be extraordinarily important in perpetuating respect for the rule of law and ultimately will act as a barrier against deprivations of human rights.

It is, therefore, critically important for nations attempting to make the transition from authoritarian rule to democratic rule to consolidate the rule of law. This is important not only to secure respect for fundamental rights and for the observance of the democratic process, but also to achieve satisfactory levels of economic and social development. It is also necessary—and obvious—that the consolidation of the rule of law, with the consequent overcoming of "dumb

---

restraints of the Bill of Rights. The vehicle for this impressive development was the Fourteenth Amendment. Simply put, it has served as the legal instrument of an egalitarian revolution—a revolution in judicial legal method as well as in substance. The Supreme Court employed this amendment, as well as the other Civil War amendments, to protect citizens from the employment of government authority that violates our national conceptions of human dignity and liberty. The United States has been radically transformed by the standards, promises, and power of the Fourteenth Amendment. Citizens of all states are now no less citizens of the United States. Each person is entitled to due process and equal protection of the laws from all levels of government, state as well as federal. For an elaboration of this theme see Irwin P. Stotzky, *Federalism, Judicial Review, and the Protection of Individual Rights* (Aug. 5, 1992) (unpublished manuscript) (on file with the author).

122. See IRWIN P. STOTZKY, *LAW AS JUSTICE: THE MORAL IMPERATIVE OF OWEN FISS' SCHOLARSHIP* (2009).

anomie," requires strengthening the independence, reliability, and efficiency of the judicial process.

To do this, nations must satisfy the guarantees which derive from the idea of due process of law. These guarantees are concerned with the way in which an act of State coercion—which because of its very nature infringes upon an individual right and thus must be specially justified—may be exerted against a particular individual. The general principle in a liberal democracy is that when a government act coercively deprives an individual of a vital good, as many independent powers of the state as possible should intervene to ensure that such an act is truly necessary for the good of society. The legislative branch of government necessarily intervenes in regulating constitutional rights. It draws a balance between constitutional rights and determines the conditions under which some of them may be limited for the sake of others. While the necessary generality of this legislation guarantees some degree of impartiality, it is clear that the power may be arbitrarily applied. Thus, the power of the state to perpetrate an act of coercion against an individual must necessarily be mediated by an independent judicial power. Indeed, the ideal of a liberal democracy is that a judge should always intervene between an individual and an act of state coercion.

As many commentators argue,<sup>123</sup> there are two main justifications for interposing a measure of due process between the coercive deprivation of a good and the individual who is the victim of it. The first is an intrinsic value resulting from the fact that the individual in question is not merely an object to be manipulated, but rather is part of a dialogue in which the prosecution tries to convince him of the rightness of the coercion, as part of a cooperative search for truth. The second justification ascribes to due process an instrumental value; it is viewed as a mechanism for the impartial application of laws. Both justifications, of course, complement each other. To have a dialogue in which the person affected is an active part of the power process is the best way of achieving impartial applications of the law.

The general guarantee of due process of law implies a series of other guarantees; for example, those due process guarantees associated with access to the jurisdiction of courts. Thus, there must be guarantees related to the conditions for standing, the availability of appropriate remedies, such as *habeas corpus* and injunctions, which protect basic rights, the guarantee against being tried *in absentia*, the possibility of appeals, the availability of legal assistance, the proximity of courts, the openness of the judicial procedure, and the efficiency and expedience of that procedure.

Other crucial due process guarantees are those related to the characteristics that the judicial process must satisfy, which include: (a) the observance of the democratically enacted laws; (b) the unrestricted search for the truth about the facts; and (c) the impartiality of the judge between the parties involved in the

---

123. See LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 666-67 (2d ed. 1988); see generally Irwin P. Stotzky & Alan C. Swan, *Due Process Methodology and Prisoner Exchange Treaties: Confronting an Uncertain Calculus*, 62 MINN. L. REV. 733 (1978).

process. Additional implied guarantees include those due process guarantees associated with the conditions that state coercion must fulfill, such as not imposing cruel or inhumane punishment, being rational in enforcing the purpose of social protection that the law was passed to meet, allowing the individual the possibility of avoiding prosecution and punishment if he complies with the legal requirement (an idea which rejects retroactive and vague legislation), and not punishing an individual for the commission of involuntary acts.

In many nations which have attempted to make the transition to democracy, the ideal of due process of law has not been actively enforced. Indeed, respect for the guarantees of due process has often suffered from considerable oscillations and from a combination of progressive constitutional and legislative acts and judicial decisions that intentionally disregard those guarantees. This has occurred despite the fact that such guarantees are recognized in most of the constitutions of these nations.<sup>124</sup>

Moreover, although it is clear that the guarantees in the constitutions of these nations do not explicitly include many of the necessary remedial devices, such as habeas corpus and injunctions, which allow access to the administration of justice, it is obvious that without proper remedial devices the rights become meaningless. To put it another way, the existence of efficacious remedies inheres in the very rights guaranteed in a liberal democracy. In spite of this recognition, many of these nations do not have remedies sufficient to protect guaranteed rights, or, if they do have the necessary remedies, the authorities have been almost powerless to enforce them.

Legal assistance is another guarantee that is sorely lacking in many of these nations. For example, such assistance in many nations is quite costly, in part as a result of the length of the judicial proceedings. Although, in some of these nations, there are some mechanisms for free legal assistance—such as lawyers for poor and incompetent people—the procedures for appointing lawyers to cases is extremely inefficient. In addition, these lawyers defend relatively few cases, such as those involving minors or the mentally incompetent. There are also mechanisms for legal assistance organized by municipalities or lawyers associations, but these are equally inefficient and insufficient. It is also true that courts are not generally accessible to large segments of the population, both because of geographical location and because their procedures are too cumbersome, expensive, and slow for dealing with the kinds of controversies common to the large majority of the population.

The judicial process itself raises grave concerns. In Argentina, for example, there has historically been institutional instability because of the large degree of dependence by the courts, particularly by the Supreme Court, on the political process. The Argentine Supreme Court, as in many of these nations' supreme courts, is unstable because it frequently reverses its own opinions and because its justices are frequently replaced. Indeed, almost every new government has had a

---

124. Examples, of course, include Argentina and Haiti.

judiciary of their own choice. For example, during the military regimes, one of the first acts was to assault the judicial power. The military leaders selected judges who would legitimize the military's seizure of power. With the return of civilian government, the opportunity to shape the judiciary came directly after the previous military assault on it. Nevertheless, in some of the civilian governments, particularly President Alfonsin's government, the judiciary maintained its independence.

The due process guarantees which should be granted in the course of the judicial process are further impaired in these nations because of many factors, such as the extreme slowness of the proceedings, the secretness and exaggerated ritualism in which they are conducted, the delegation of many judicial functions to clerical employees, the ex-parte communications many judges engage in, and simple corruption. All of these factors destroy the impartiality and expediency of the administration of justice.

There are also problems in complying with the requirement of legality under which coercion may be exerted by the State. The major problems about the conditions that acts of coercion must satisfy have to do with the ways in which government detains people and treats them from arrest through imprisonment. The problem runs deeper. Large numbers of acts of torture and maltreatment on the part of the police and paramilitary forces are still reported, though they have certainly diminished since reestablishment of democracy. Prisons are crowded, unhealthy and non-rehabilitative places. There have been several inmate uprisings in these countries. Perhaps the most grievous situation is that of people held in detention during the entire length of their trial, without any possibility of parole. They are in almost the same conditions as convicts, and often the trial lasts so long that they serve the entire sentence for a crime for which they may later be found not guilty. Moreover, they are not allowed any compensation for this preventive detention. Further, many judges tend to convict a detainee after he has been in prison for such a long time. In their minds, a retroactive conviction legitimates the detainee's imprisonment.

However depressing these factors appear to be, and however debilitating to the strengthening of the rule of law and the consolidation of democracy, all is not lost. There are signs of hope. For example, major progress in the procedural conditions for the protection of human rights has been effected by the ratification of several international agreements in some nations undergoing the transition to democracy, such as the American Convention on Human Rights,<sup>125</sup> the International Covenant on Civil and Political Rights,<sup>126</sup> with the optional protocol, and the International Covenant on Economic, Social, and Cultural Rights.<sup>127</sup> Unfortunately, Haiti has

---

125. American Convention on Human Rights: "Pact of San Jose, Costa Rica", Nov. 22 1969, 1144 U.N.T.S. 123.

126. International Covenant on Civil and Political Rights, Optional Protocol to the Above-Mentioned Covenant, Dec. 19 1966, 999 U.N.T.S. 172.

127. International Covenant on Economic, Social and Cultural Rights, Dec. 16 1966, 993 U.N.T.S. 3.

not been in the forefront of nations which have ratified many of these international agreements.

## VII. SPECIFIC PROPOSALS TO HELP HAITI RECOVER FROM THE EARTHQUAKE AND MOVE TOWARDS DEMOCRACY

As the international community reaffirms its commitment to Haiti, it must overcome the mistakes of the past. Accountability, transparency, empowerment, and capacity building should guide all rebuilding efforts. Donor states should use a rights-based approach, targeting aid to build the capacity of the Haitian government to ensure the rights of its people. Donor states should act with full transparency and accountability, making information about their plans and programs available to all, and should work with the Haitian government to set up public monitoring and reporting mechanisms. Donor states should coordinate their actions by setting up a Multi-Donor Fund that includes Haitian civil society and community-based organizations as voting members.

But how are these factors to be implemented in Haiti? I suggest the following steps to meet these goals:

Donor states must conduct assistance with the goal of ensuring the government of Haiti has the capacity to guarantee the human rights of all Haitians, including economic, social, and cultural rights, as well as civil and political rights. This requires donors to work directly with the Government of Haiti to identify needs and to develop, implement, and monitor programs to provide basic public services, including education and public health, water, and sanitation services. They must also provide, to the fullest possible extent, assistance in the form of budgetary support to the Government of Haiti. In addition, all non-governmental organizations operating in Haiti must be encouraged to coordinate with the Government of Haiti and other agencies and report their activities to the Government of Haiti, Multi-Donor Fund, and the Haitian public.

Donor states must coordinate all assistance through a Multi-Donor Fund. They must include the Government of Haiti and representatives of Haitian civil society and community-based organizations as voting members on the governing committee of a Multi-Donor Fund. In addition, all assistance to Haiti must be conducted in accordance with the International Aid Transparency Initiative and Paris and Accra principles.<sup>128</sup> Moreover, it would be very helpful to create a public web-based database to report and track donor pledges, disbursed funds, recipients, sector areas, and expected outcomes under the aegis of the Multi-Donor Fund. The international community must also establish and fund a mechanism to deliver information about assistance projects to the Haitian people, administered by the Government of Haiti in partnership with civil society and community based groups. The international community should build the capacity of the Haitian government to budget, disburse funds, and implement projects in a transparent way.

---

128. Int'l Aid Transparency Initiative, *Accra Statement* (Sept. 4, 2008), available at [http://www.aidtransparency.net/wp-content/w3tc/pgcache/\\_index.html.gzip](http://www.aidtransparency.net/wp-content/w3tc/pgcache/_index.html.gzip).

Any aid project has to ensure that assistance projects are Haitian-led and community-based at every stage, recognizing the importance of including internally displaced persons who may not be integrated into the community. These projects should prioritize programs benefiting vulnerable groups, including women and children, the disabled, the elderly, and internally displaced persons. In addition, the United Nations sector clusters must include Haitian civil society and community-based organizations. Where non-Haitian leadership is absolutely necessary, the international community must ensure that Haitians are provided positions where they can learn from project implementation and develop a national capacity to perform those functions.

Finally, the international community and the Haitian government must ensure assistance delivers concrete results. To do this, they must establish and fund a mechanism to measure and monitor the outcomes of assistance projects at the community level. All findings should be made public. This mechanism should be administered by the Government of Haiti in partnership with civil society and community-based groups and should include a mechanism for Haitians to register complaints about problems with implementation of projects.

The international community should request the United Nations, through the office of the United Nations Special Envoy, to report publicly every six months on disbursement of funds by project, progress on project implementation, and whether aid has been delivered in a transparent, accountable, and participatory manner. Finally, the international effort to help Haiti must ensure that all implementing organizations, including the government of Haiti, United Nations agencies, non-governmental organizations, and community-based organizations, comply with principles of transparency, accountability, participation, and capacity-building by using measurable indicators and by providing information on funds expended and progress on project implementation.

Implementing these concepts requires a new vision for Haiti. And that vision must come from the Haitian people. All citizens—particularly the historically excluded majority—must be allowed a voice in how to organize and develop the nation. These people surely know how to organize social movements. They must be given a voice, for example, in how to educate their children, raise crops, and build homes. They must be the force behind and in front of the reconstruction effort.<sup>129</sup>

## VIII. CONCLUSION

On April 15, 2010, Haiti's Parliament approved the creation of a commission co-chaired by former President Bill Clinton to oversee billions in post-earthquake

---

129. Camp residents, for example, have managed a small scale model of a future society that they believe should be created. "This includes democratic participation by community members; autonomy from foreign authority; a focus on meeting the needs of all; dignified living conditions; respect for rights; creativity; and a commitment to gender equality." Beverly Bell, *Haitian Refugee Camps Model Future Society*, REVISTA AMAUTA, (Aug. 27, 2010), <http://revista-amauta.org/2010/08/haitian-refugee-camps-model-future-society/>.

reconstruction aid.<sup>130</sup> The measure has been approved by the parliament and by President René Préval.<sup>131</sup> The vote extends Haiti's earthquake state of emergency for eighteen months, leaving the billions of dollar delivered in that time to be overseen by the Interim Haiti Recovery Commission, led by Clinton, who is also the United Nations special envoy to Haiti, and Prime Minister Jean-Max Bellerive. The international donors demanded the vote because they want a high degree of foreign control over an estimated \$5.3 billion pledged for 2010-2011 at a March 31, 2010 United Nations Conference. President Préval will have veto power over the commission decision. He will almost certainly not use that power because he cannot afford to have the funds cut off. Indeed, the reconstruction panel includes representatives who pledged at least \$100 million in cash or \$200 million of debt relief and includes the United States, Venezuela, Brazil, Canada, the European Union, the Inter-American Development Bank, and the World Bank.

In addition to the aid problem, Haiti faces an election problem. The legislature has dissolved after the members' terms expired in May, 2010, because the earthquake forced the cancellation of February's legislative election. Préval's five-year term ends in February, 2011. An attempt to prolong his term by several months if elections are not held resulted in protestors clashing with police in front of the ruins of the National Palace. Failing to hold the November, 2010, election on time, even despite the losses of the electoral commission headquarters and records, would certainly hurt Haiti's fragile democracy. After much bickering, however, on June 27, 2010, President Préval issued three presidential decrees to resolve this crisis.<sup>132</sup> Two of the decrees designated November 28, 2010 as the official date for Haiti's presidential and postponed legislative elections. The third decree mandated Haiti's nine-member Provisional Electoral Council to plan for presidential elections.<sup>133</sup>

But Haiti has made almost no progress in rebuilding since the earthquake. The picture is grim. Millions are displaced from their homes, and rubble and collapsed buildings dominate the landscape. The Haitian camps are congested beyond imagination, with dilapidated tents standing edge to edge in every square foot of

---

130. *Progress*, INTERIM HAITI RECOVERY COMM'N, <http://www.cirh.ht/index.jsp?sid=1&id=27&pid=27> (last visited Nov. 4, 2010); Jonathan M. Katz, *Haiti Lawmakers OK Clinton-Led Rebuilding Panel*, ASSOCIATED PRESS, Apr. 16, 2010.

131. INTERIM HAITI RECOVERY COMM'N, *supra* note 130.

132. Jacqueline Charles, *Haiti's President Picks Date for Elections*, MIAMI HERALD, June 27, 2010, <http://www.miamiherald.com/2010/06/27/1703022/haitis-president-picks-date-for.html>; Jonathan M. Katz, *US Senate Report Says Haiti Rebuilding Has Stalled*, ASSOCIATED PRESS, June 22, 2010. Another serious problem is the exclusion of the majority party. Democratic members of the United States Congress are concerned that Haiti's Provisional Electoral Council has excluded candidates from political parties which are loyal to the exiled former President Jean-Bertrand Aristide, including the country's largest—Fanmi Lavalas. See *Lawmakers Urge Clinton to Ensure Haiti Elections are Inclusive*, N.Y. TIMES, Oct. 9, 2010, <http://www.nytimes.com/2010/10/09/world/americas/09haiti.html>.

133. Unfortunately, as of August 28, 2010, allegations have already been made that the "domestic political elite is manipulating the country's election commission to freeze out strong challengers." Fifteen presidential candidates were disqualified by the Commission of Electoral Observation without explanation. Alice Spier, *Wyclef Jean's Disqualification Signals Haiti Diaspora Not Welcome in Politics*, CHRISTIAN SCI. MONITOR (Aug. 25, 2010, 4:39 PM EDT), <http://www.csmonitor.com/World/Americas/2010/0825/Wyclef-Jean-s-disqualification-signals-Haiti-diaspora-not-welcome-in-politics>.



available space. With the rainy season beginning, and with tropical rains lashing the capital daily, the reconstruction has simply not started. Indeed, the crowded conditions and overtaxed public toilets raise real concerns about a worsening cholera epidemic. Construction is being held up by land disputes and customs delays while plans for moving people out of the tent-and-tarp settlements remain in "early draft form." It is, of course, to be expected that cleaning up the rubble will take time. But what is demoralizing is that it has not really started.

Indeed, as this article goes to press, more than a year after the earthquake, Haiti's streets are still lined with piles of rubble.<sup>134</sup> Government officials and aid workers claim that rebuilding efforts are impeded by "a lack of available land and a complex ownership situation confused by multiple property claims and an absence of reliable land records."<sup>135</sup> Only modest efforts have been made by organizations to begin rubble removal operations and therefore calls have been made to place the issue into the forefront of national debate.<sup>136</sup> These organizations desperately need help, but apparently rubble removal is not "sexy" enough to gain a response from donor nations.<sup>137</sup>

Haiti continues its destructive approach. After an initial honeymoon period with the international community, the Haitian government has lapsed into its classic pattern of corruption, inefficiency and delay that holds the country hostage. The Haitian government has imposed stringent controls which have hurt the effort to clean up the incredible mess caused by the earthquake. For example, at a recent United Nations-led meeting, one international organization reported that it had forty-five vehicles waiting at Haiti's border with the Dominican Republic.<sup>138</sup> They had been there several weeks because the Haitian officials had denied them entry. Unfortunately, this is not an isolated case. Dozens of organizations involved in the relief effort have had trouble importing goods and materials. The restrictions and requirements put on new projects to help the Haitian people continue to grow. With over 600 organizations present in Haiti, central planning is essential. But the Haitian government is simply not up to the task.

Moreover, the classic divide between the economic elite and everyone else continues to grow. As ordinary Haitians suffer, the elite continue to live in luxury in elegant homes situated above Port-au-Prince. As they have historically, they are profiting from the country's latest tragedy. Haiti's elite control access to rental cars, trucks, housing, offices, warehouses, and local supplies, and the aid agencies must purchase those materials from them. The rich also have a huge stake in how the reconstruction takes place. International efforts to aid the poorest Haitians also make the rich even richer and increase the already harrowing gap between the economic elite and everyone else.

---

134. Pascal Fletcher, *Haiti Quake Homeless at Risk, Shelter Crisis Drags*, REUTERS, Sept. 29, 2010, available at <http://www.alertnet.org/thenews/newsdesk/N29189981.htm>.

135. *Id.*

136. *Id.*

137. *Id.*

138. E. Thomas Johnson, *Haitians Still Wait for Recovery*, L.A. TIMES, June 25, 2010, <http://articles.latimes.com/2010/jun/25/opinion/la-oe-johnson-haiti-20100625>.

Even with these incredible hurdles to overcome, however, the Haitian people continue to confront these issues with courage and hope. My hope is that at least some of the economic and social plans I suggest in this article will be implemented and that they will lead to a movement from “misery to poverty with dignity” and beyond for the present and future generations of Haitians.